Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:03 p.m.

1. CHAIR’S REMARKS.

Mr. Firestone: The Planning Commission meeting for December 6, 2016 is called to order. Good evening. Welcome in from the rain. I just have a few short remarks and then we’ll get to the balance of the meeting. I first want to just acknowledge publicly that each Commissioner received a letter from the lawyer representing Martin Honda indicating that they just wanted to be clear that they were only knocking down the service garage and not the body shop. And that was the way I had interpreted it anyway but it’s not particularly germane to the question of their proposal. But it was an ex parte communication so I wanted to disclose it to this body. As well, Commissioner Silverman sent all the Commissioners an email about the University of Delaware’s agreement to allow Main Street employees to park in the lots. The email just said, “Hmmm, it looks like we may have had some effect.”

So we do have a busy night with a long agenda, so I think we’re going to try and act the way we did the last time. We’re going to ask the Commission staff to briefly summarize the various items. We’ve asked the developer to go over new material and to try and contain your remarks within about 10-15 minutes. And we would ask the citizens, particularly those who are potentially affected by any of the decisions to then speak and to try and limit yourself to three minutes so we can get out of here at some reasonable hour. With that, I call on Commissioner Silverman to run us through the minutes and see if there have been any additions, subtractions or modifications from either of two minutes from two different meetings. Thank you.

2. THE MINUTES OF THE OCTOBER 18, 2016 AND NOVEMBER 1, 2016 PLANNING COMMISSION MEETINGS.

Mr. Alan Silverman: Thank you, Mr. Chairman. We are approving minutes from two different meetings: the CIP meeting and the regular Commission meeting from 11/1/16. The meeting minutes for both meetings have been posted on the internet site and paper copies have been distributed to the Commissioners. We did receive a correction from Commissioner Hurd with
With respect to the CIP minutes. Line 681 should read “through wall units” not “three walls units.” With respect to the Commission meeting of 11/1/16, line 2,977 should read “meeting” instead of “workshop.” They are the corrections that have been submitted.

Mr. Firestone: Does anyone else have any corrections, additions or subtractions for the minutes? Okay. We want to take these, then, one at a time. Do we have a motion regarding the October 18, 2016 minutes?

Mr. Silverman: I move they be accepted as corrected.

Mr. Firestone: Second?

Mr. Bob Stozek: Second.

Mr. Firestone: Any discussion? All in favor, signify by saying Aye. Opposed? Motion carries.

MOTION BY SILVERMAN, SECONDED BY STOZEK, THAT THE MINUTES OF THE OCTOBER 18, 2016 PLANNING COMMISSION WORKSHOP BE APPROVED.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

Mr. Firestone: Okay, do we have a motion regarding the November 1, 2016 minutes?

Mr. Silverman: I move that the November 1, 2016 minutes be accepted as corrected.

Mr. Firestone: Second?

Mr. Stozek: Second.

Mr. Firestone: Any discussion? All those in favor, signify by saying Aye. Opposed? Motion carries.

MOTION BY SILVERMAN, SECONDED BY STOZEK, THAT THE MINUTES OF THE NOVEMBER 1, 2016 PLANNING COMMISSION WORKSHOP BE APPROVED.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, REZONING, MINOR SUBDIVISION AND SITE PLAN APPROVAL PLAN FOR 40 EAST CLEVELAND AVENUE IN ORDER TO DEMOLISH THE EXISTING BUILDING AND CONSTRUCT A GARDEN APARTMENT CONTAINING THREE DWELLING UNITS.

Mr. Firestone: Okay, that takes us to Item 3, the review and consideration of a Comprehensive Development Plan amendment, rezoning, minor subdivision and site plan approval for 40 East Cleveland Avenue in order to demolish the existing building and construct a garden apartment containing three dwelling units.
Ms. Maureen Feeney Roser: Thank you, Chairman Firestone. For the benefit of those in the audience, I will summarize the Planning and Development report on this project.

[Secretary's note: Ms. Feeney Roser proceeded to summarize the Planning and Development Department report on the proposed Comprehensive Development Plan amendment, rezoning minor subdivision and site plan approval plan for 40 East Cleveland Avenue, which reads as follows:]

On March 21, 2016, the Planning and Development Department received an application from Hillcrest Associates, Inc. on behalf of Robert J. Bloser for rezoning and minor subdivision with site plan approval for the 0.237 acre property located at 40 East Cleveland Avenue. The applicant is requesting approval to rezone the parcel from RD (one family semi-detached residential) to RM (multi-family dwellings – garden apartments), and minor subdivision with site plan approval to demolish the existing single family home at the site and build a three-story apartment building with parking on the first floor and three five-bedroom apartments on two floors above. A Comprehensive Development Plan amendment is also required to accommodate the proposed redevelopment.

The Planning and Development Department report on 40 East Cleveland Avenue follows:

**Property Description and Related Data**

1. **Location:**
   
   The property is located on the north side of East Cleveland Avenue, approximately 440 feet west of Wilbur Street and approximately 930 east of North College Avenue.

2. **Size:**
   
   The property is 0.237 acres.

3. **Existing Land Use:**
   
   The site presently contains a single family home with a valid rental permit.

4. **Physical Condition of the Site:**
   
   The property contains a single family home used as a rental unit, which is accessed through a single stone driveway on the east side of the property.

   The site slopes gently from north to south towards Cleveland Avenue. Aside from the home and driveway, the remainder of the property is grass with a few shrubs and trees along the northern and western borders of the property.

   Regarding soils, according to the subdivision plan and the United States Department of Agricultural Natural Resources Conservation Service (NRCS), the site consists of Elsinboro-Delanco-Urban complex (ErB), with 0-8% slopes. The NRCS indicates that these soils do not have limitations for the development proposed.

5. **Planning and Zoning:**
   
   Currently, the site is zoned RD (one family semi-detached residential). RD permits the following:

   A. A one-family, semidetached dwelling.
   B. Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage as defined and limited [in] Article II and subject to the special regulations
of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

C. Cluster or neo-traditional types of developments, including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.

D. A one-family detached dwelling.

E. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident of the premises, but not including student homes, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling except that an owner occupant family resident shall mean that the individual taking in nontransient boarders or roomers has a minimum of 50% ownership by deed of the property; and further provided that if more than two boarders or roomers are taken in, rental permits are required to be applied for and issued as provided in Chapter 17, Housing and Property Maintenance, of this code. In those instances in which there is more than one individual owner of a property on the deed pertaining to that property, and in which those multiple owners are not spouses owning as tenants by the entireties, said multiple owners, upon proper request, may be required to provide affidavits through the rental permit process, as provided in Chapter 17, that establish to the satisfaction of the city that minority ownership has not been created to circumvent any provision of this code.

F. The taking of nontransient boarders or roomers in a one-family dwelling by a nonowner-occupant family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, and with special requirements.

G. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.

H. Public and private elementary, junior, and senior high schools.

I. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.

J. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.

K. Municipal sewage pumping station, and sewers.

L. Right-of-way, street.

M. Swimming pool, private; swimming pool, public.

N. Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.

O. Utility transmission and distribution lines.

P. Public transportation bus or transit stops for the loading and unloading of passengers.

Q. Student home, with special requirements.

R. No impact home businesses in a residential dwelling shall be permitted subject to special provisions.

RD zoning also permits, with a Council-granted special use permit, the following:

A. Nursing home, rest home, or home for the aged, subject to special requirements.

B. If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial".

C. Police and fire station, library, museum, and art gallery.

D. Country club, regulation golf course, including customary accessory uses subject to special requirements.

E. Professional office in a residential dwelling permitted subject to special provisions.
F. Customary home occupations subject to special requirements in addition to all other applicable requirements.

G. Substation, electric, and gas facilities, subject to special requirements.

H. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.

I. Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.

J. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.

K. Swimming club, private (nonprofit).

L. Accessory buildings or structures, with impact, and accessory uses, with impact, including a private garage as defined and limited in article II and subject to the special regulations of article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

A summary of the area regulations in RD district is provided below. With some exceptions, area requirements are as follows:

(1) Minimum lot area. 6,250 square feet
(2) Lot coverage. 50%; 25% for building
(3) Minimum lot width. 50 feet
(4) Height of buildings. Max three stories or 35 feet
(5) Building setback lines. 15 feet
(6) Rear yards. 20 feet
(7) Side yards. 8 feet minimum/20 feet aggregate

The applicant is requesting RM (multi-family dwelling – garden apartments) for the site, which permits the following:

A. Garden apartments, subject to either site plan approval as provided in Article XXVII or special regulations.

B. One-family, semidetached dwelling.

C. Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further provided that the minimum lot area for each eight or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.

D. Nursing home, rest home or home for the aged, with special provisions.

E. Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage as defined and limited in article II and subject to the special regulations of article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

F. Cluster or neo-traditional types of developments, including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.

G. One-family detached dwelling.

H. The taking of nontransient boarders or roomers in any one-family dwelling by a family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use provided there is no display or advertising on the premises in connection with such use, provided there are not more than three boarders or roomers in any one-family dwelling, and provided that such use by a nonowner occupant family resident on the premises and an owner occupant family resident taking in more than two roomers or boarders, is permitted subject to special requirements.

I. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.

J. Public and private elementary, junior, and senior high schools.

K. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
L. Municipal tower, water storage tank, water reservoir, water pumping station and water treatment plant.
M. Municipal sewage pumping station and sewers.
N. Right-of-way, street.
O. Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
P. Utility transmission and distribution lines.
Q. Public transportation bus or transit stops for the loading and unloading of passengers.
R. One-family town or rowhouse subject to the requirements of Sections 32-13(a)(1) and 32-13(c)(1).
S. Student home, with special requirements.
T. No impact home businesses in a residential dwelling shall be permitted subject to special provisions.

RM zoning also permits, with a Council-granted special use permit, the following:

A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the surrounding area, subject to conformance with special requirements.
B. Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
C. Physicians’ and dentists’ offices, subject to special requirements.
D. If approved by the council, property in a residential zone adjacent to an area zoned “business” or “industrial” may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned “business” or “Industrial.”
E. Police and fire stations, library, museum, and art gallery.
F. Country club, regulation golf course, including customary accessory uses subject to special requirements.
G. Professional office in a residential dwelling permitted subject to special provisions.
H. Customary home occupations subject to special requirements in addition to all other applicable requirements.
I. Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
J. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
K. Swimming club, private (nonprofit).
L. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, with special provisions.
M. Accessory buildings or structures, with impact, and accessory uses, with impact, including a private garage as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.

A summary of the area regulations for garden apartments in RM district is provided below.
With some exceptions, area requirements are as follows:

(1) Minimum lot area. One acre.
(2) Lot coverage. 20%.
(3) Minimum lot width. 50 feet.
(4) Open area. 40%.
(5) Height of buildings. Max three stories or 35 feet.
(6) Building setback lines. 30 feet from the line of all perimeter streets; 25 feet from the line of all interior streets; and 25 feet from all exterior lot lines.
Regarding zoning area requirements, please be advised that the applicant is requesting site plan approval for the 40 East Cleveland Avenue subdivision. Code Section 32-97 provides for “alternatives for new development and redevelopment proposals to encourage variety and flexibility, and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations. Site plan approval shall be based upon distinctiveness and excellence of site arrangement and design and including, but not limited to:

(1) Common open space;
(2) Unique treatment of parking facilities;
(3) Outstanding architectural design;
(4) Association with the natural environment including landscaping;
(5) Relationship to the neighborhood and community and/or;
(6) Energy conservation defined as site and/or construction design that the building department has certified meets or exceeds the ‘certified’ level as stipulated in the LEED (Leadership in Energy and Environmental Design) United States Green Building Council Program or a comparable building department approved energy conservation program.”

In this case, the applicant is requesting site plan approval for relief from the following requirements:

<table>
<thead>
<tr>
<th>Code</th>
<th>Requires</th>
<th>Shows</th>
<th>Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section</td>
<td>Maximum lot coverage</td>
<td>20%</td>
<td>35.6%</td>
</tr>
<tr>
<td>Minimum lot size</td>
<td>One acre</td>
<td>0.237 acres</td>
<td>- 0.763 acres</td>
</tr>
<tr>
<td>Minimum open area</td>
<td>40%</td>
<td>36.1%</td>
<td>- 3.9%</td>
</tr>
<tr>
<td>Code</td>
<td>Min. setback from street</td>
<td>30 feet</td>
<td>15.5 feet</td>
</tr>
<tr>
<td>Setback from lot lines</td>
<td>25 feet</td>
<td>8 feet west*</td>
<td>- 17 feet</td>
</tr>
<tr>
<td>Minimum rear yard</td>
<td>25 feet</td>
<td>24.5 feet**</td>
<td>- 0.5 feet</td>
</tr>
<tr>
<td>Minimum side yard</td>
<td>20 feet</td>
<td>8 feet west*</td>
<td>- 12 feet</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 foot east*</td>
<td>- 19 feet</td>
</tr>
</tbody>
</table>

*Setback from side lot lines/side yards = same item of deviation
**Setbacks from north lot line/rear yard = same item of deviation

The Commission will need to consider the requested area regulation exceptions as highlighted above against the standards of distinctiveness and excellence of site design outlined in Section 32-97 and the developer’s site plan approval submission in evaluating this proposal.

In terms of comprehensive planning, Comprehensive Development Plan IV calls for “single family residential (medium density)” uses for the site, permitting 4-10 dwelling units per acre. Comprehensive Development Plan V calls for “low density residential” uses at the site which are defined in the Plan as residential dwelling units that include single family detached, semi-detached, row or townhomes with densities of 11 or fewer dwelling units per acre. The 40 East Cleveland Avenue rezoning and minor subdivision plan with site plan approval calculates to 13 units per acre (12.6). Therefore, a Comprehensive Development Plan amendment to multifamily residential (medium to high density) for Plan IV or high density for Plan V land use designations for the site is required to accommodate the development. (Note: As of the date of this report, Comprehensive Development Plan IV is in place.)
Regarding adjacent and nearby properties, parcels adjacent to the north, east and west of 40 East Cleveland Avenue are zoned RD. Across Cleveland Avenue to the south are RM zoned properties. All of these properties contain single family homes, most of which are rental units.

Regarding gross residential density, as noted above, the 40 East Cleveland Avenue rezoning and minor subdivision plan with site plan approval calls for residential units at a density of 13 dwelling units per acre. By way of comparison, for other somewhat recently approved RM zoned projects in the area, please note the following densities:

<table>
<thead>
<tr>
<th>Development</th>
<th>Units per Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>47 West Cleveland Avenue</td>
<td>13</td>
</tr>
<tr>
<td>Cleveland Station</td>
<td>13</td>
</tr>
<tr>
<td>Campus Walk</td>
<td>16</td>
</tr>
</tbody>
</table>

Based on discussions at both Planning Commission and Council meetings, the following density calculations are also provided. In terms of bedrooms per acre, the 15 proposed bedrooms associated with the 40 East Cleveland Avenue project calculate to 63 bedrooms per acre. Regarding RM zoned recently approved projects in the area, please note the following densities:

<table>
<thead>
<tr>
<th>Development</th>
<th>Bedrooms per Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>47 West Cleveland Avenue</td>
<td>78</td>
</tr>
<tr>
<td>Cleveland Station</td>
<td>69</td>
</tr>
<tr>
<td>Campus Walk</td>
<td>72</td>
</tr>
</tbody>
</table>

**Status of Site Design**

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvements plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. If the construction improvements plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvements plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the 40 East Cleveland Avenue Comprehensive Development Plan amendment, rezoning and minor subdivision with site plan approval plan calls for the demolition of the existing structure and the construction of one three-story apartment building with first floor parking and three five-bedroom apartments on two floors above. The plan shows nine garage parking spaces, which meets Code for apartments with more than three bedrooms. Access to the site will be from Cleveland Avenue via a 24 foot wide drive on the east side of the property with a decorative porte cochere one foot off of the property line.

**Fiscal Impact**

The Planning and Development Department has evaluated the 40 East Cleveland Avenue development plan on Newark’s finances. The estimate generated on net return is based on the Department’s Fiscal Impact Model. The Model projects the 40 East Cleveland Avenue impact –
that is, total anticipated revenues generated less the total cost of municipal services provided. The Planning and Development Department’s estimate of net revenue for the project is $771 annually. Please note that the current fiscal impact of 40 East Cleveland Avenue is not calculated into the estimate. In other words, the impact is calculated from the complete proposed project and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note there is no difference between the first and future years’ estimate because the applicant already owns the property and therefore, there is no real estate transfer tax benefit in the first year from the sale of the property.

Traffic

Because Cleveland Avenue is a State owned and maintained roadway, the Planning and Development Department requested DelDOT review of the 40 East Cleveland Avenue plan. While DelDOT provided initial stage submission comments for the developer, they did not provide specific traffic comments to share with the Commission concerning the three unit development.

Subdivision Advisory Committee

Electric

1. The Department’s comments have all been addressed in design and/or in General Notes on the plan.

Parks and Recreation

1. The Department notes the landscape plan is acceptable as submitted and that they may have additional comments during the Construction Improvement Plan process, should the project be approved.

2. The Department indicates that the required open space referenced in General Note #20 does not meet the requirements of Subdivision Regulations, Appendix VI which mandates the land be suitable for parks, playgrounds, recreational areas or open space. Therefore, the Department will accept money in lieu of land at $450 per unit. The Department will use these funds to fund park improvements in the general neighborhood. The developer has agreed to this condition. See Plan Note #24.

Police

1. Although the number of parking spaces provided meets Code for three units with more than three bedrooms each, the Department is concerned there will be issues with parking at the site. Therefore, they recommend a no parking restriction in the driveway. Parking in the driveway will block vehicles from getting in and out of the site. The parking restriction should be included in the lease agreements for the units.

2. The Department did not express concern for any traffic impacts of adding two (2) units to the site.

Planning and Development

Land Use

1. The Department suggests that the Comprehensive Development Plan amendment to higher density residential uses is appropriate for the location. As the Commission knows, the Comp Plan land use designations are based on the existing zoning and the existing uses of the property. In this case the RD zoning with one single family dwelling triggered the “single family residential (medium density)” designation in Plan IV and the low density designation in Plan V. Considering the high density residential designations along the
south side of Cleveland Avenue, the recent multi-family residential development activity in the general area, and the abundance of rental uses along Cleveland Avenue and the vicinity, the Department suggests both the Comp Plan amendment and the rezoning to RM are appropriate for the site. In addition, the Department believes this particular proposal may encourage other property owners to seek development approvals to redevelop properties along Cleveland Avenue, thereby upgrading housing to meet current Codes as well as improve the aesthetics of the area. Specifically, as one considers the Comp Plan land development core principles, the Department believes this proposal to be appropriate and efficient infill land redevelopment, resulting in a sustainable use of land and limiting the need for new infrastructure. In addition, this development should encourage other new developments to meet high standards for site and architectural design. Having said that, the Department indicates the plan title will have to be changed to reflect the requested Comp Plan amendment before Council review.

2. The Department indicates that the Site Plan Approval Data table will need to be revised for Minimum Setback from Street from the 23 feet shown on the table to the actual 15.5 feet proposed, and as detailed in the Data Column #8. Specifically, the Site Plan Approval Data table should show a requested deviation for setback of 14.5 feet, not 7 feet as currently shown. In addition, regarding Data Column #8, the reference to Average Setback should be removed. While it is true that the proposed setback mirrors setbacks along the street, and is preferable to the existing setback which is not consistent with development in the area, the Code provision allowing average setback calculations only applies to the average of existing buildings within 200 feet of the side lot lines within the same block front and zoning district. In this case, adjacent properties are zoned RD. The plan should be revised prior to Council review.

3. The Department indicates that Code requires two bicycle parking spaces for this development. The applicant proposes to provide bicycle storage in each garage as shown on plans, which would exceed the requirement. The garages, however, will need to be sized to accommodate the bicycle storage, along with the required 9 x 18' parking spaces, as well as trash and recycling receptacles. These matters will be addressed through the CIP process.

4. The Department indicates that, regarding site plan approval criteria, the proposal’s architecture is outstanding. Particularly, the Department believes the porte cochere is an interesting and unique detail, and further that the garage doors are attractive and unobtrusive in detail and color, which helps them blend nicely with the building design. The Department believes that the architecture will also complement the other new developments along the street.

Further, the Department notes that when one considers the other criteria for distinctiveness and excellence in site arrangement and design, there is little opportunity for common open space or landscaping improvement due to the size of the property. Having said that, however, one suggestion for improvement in association with the natural environment might be to change the non-native Japanese Snowbell proposed for the front yard to a species native to the Mid-Atlantic Coastal Plain. While the Department defers to the Parks and Recreation Department on landscaping matters, we believe this improvement should be discussed during the CIP review.

In addition, regarding site plan approval, the Department recommended increasing energy conservation measures at the site through the SAC process. To this end, the applicant indicates that the project will exceed the Code-required LEED-like requirements, reaching certified level of 47 points. See attached worksheet. The Commission may wish to discuss additional opportunities with the applicant at the meeting.

5. The Department indicates that considering the RD properties surrounding the site and their existing rental permit limits of four (4) tenants per unit, as a condition of approval, the
applicant should voluntarily deed restrict the development to no more than one (1) person per bedroom. The Department had also previously suggested that the applicant consider fewer bedrooms per unit. The applicant subsequently agreed to the one (1) person per bedroom, or a five (5) per unit restriction but did not reduce the number of bedrooms per unit. The Commission may want to discuss these matters with the developer at the meeting.

6. The Department indicates that our standard comments regarding construction to allow for future condominium construction, consistent architectural design, lighting and screening of utility hardware have been included as plan notes. See Notes 8, 10 and 13.

**Code Enforcement**

1. The proposed buildings must meet all applicable Building and Fire Code requirements. Complete architectural, plumbing, HVAC, electrical and fire protection drawings are required for permits.

2. The architectural plans will need to match the architectural renderings/elevations submitted for the project. The division recommends draft floor plans be presented to avoid issues during site plan review.

3. The final design for the porte cochere may need to be altered based on Fire Code review at the time of building permits. In this regard, General Plan Note #32 will have to be revised before Council review to indicate a 14 foot clearance, not the 13.6 feet shown.

**Public Works and Water Resources**

1. The Department indicates that prior to Council consideration:
   - General Note #14 should be revised to state that the STP fee will be paid prior to the issuance of a building permit.
   - Add a new note to plan stating “The Developer shall pay fees associated with the new meters and meter pits for all units prior to the issuance of a building permit.”
   - Add the following sentence to General Note #16 to read “Individual Mueller Thermo-Coil meter pits shall be provided for each dwelling unit.” Revised plans showing the individual meter pits on the east side of the building for each unit will be necessary at CIP.
   - Add the word “cleanouts” after the word “sewer” and delete the word “outs” in General Note #30.
   - Add the word “pay” after the word “must” and delete the word “ay” in General Note #23.
   - Add a new note stating “The developer shall provide the City of Newark a signed and sealed copy of the Department of Health (DPH) approved water as-built plans and the DNREC approved sanitary sewer as-built plans within 30 days of approval by the agencies.”

2. Delaware State Plane Coordinates shall be provided for all manholes, lateral connections cleanouts, fittings, valves, bends and hydrants through the CIP.

3. Finally, the Department notes that even though the project will generate less than 2,000 GPD average sewer flow and therefore will not require the permit and application fee,
DNREC approval for Construction of Wastewater Collection and Conveyance Systems is still required.

**Recommendation**

Because with the Comprehensive Development Plan amendment, the project will conform to the land use guidelines of the Comprehensive Development Plan IV and V, and because the rezoning and minor subdivision with site plan approval plan, with the Subdivision Advisory Committee conditions, should not have a negative impact on adjacent and nearby properties, and because the proposed development may stimulate further redevelopment and property improvements in the Cleveland Avenue corridor, the Planning and Development Department suggests that the Planning Commission take the following actions:

A. Recommend that City Council revise Comprehensive Development Plan IV land use guidelines for this location from single family residential (medium density) to multi-family residential (medium to high density) and further that Comprehensive Development Plan V land use guidelines for this location be revised from low density residential to high density residential, as shown on Planning and Development Department Exhibit A dated December 6, 2016; and

B. Recommend that City Council approve the rezoning of 0.237 acres from the current RD (one family semi-detached) zoning to RM (multi-family dwelling – garden apartments) zoning as shown on the Planning and Development Department Exhibit B dated December 6, 2016; and

C. Recommend that City Council approve the 40 East Cleveland Avenue minor subdivision with site plan approval plan as shown on the Hillcrest Associates, Inc. plan dated March 21, 2016 with revisions through August 30, 2016, with the Subdivision Advisory Committee conditions.

Ms. Feeney Roser: That concludes the summary of the report. I will be happy to try to answer any questions that the Commission may have for the Department.

Mr. Firestone: Does any Commissioners have any questions for the Department?

Mr. Silverman: I have one.

Ms. Feeney Roser: Yes, sir.

Mr. Silverman: Since the land use in the area seems to be income-producing properties, do you have any feel for the number of owner-occupied units along either Cleveland Avenue or in the adjacent area?

Ms. Feeney Roser: I believe Cleveland Avenue, and Tom may be able to help me out with this because we went through which were owner-occupied for the Cleveland Avenue Street Improvement Task Force, and I believe there are three homeowners on the street . . .

Mr. Silverman: Out of approximately how many units? Ballpark?

Ms. Feeney Roser: Sixty.

Mr. Silverman: Okay.

Mr. Firestone: Does any other Commissioner have any questions at this time?

Mr. Bob Cronin: Mr. Chairman and Maureen, on Planning Section A, is this the correct caption here? Watch my finger for a second?
Ms. Feeney Roser: The single family residential medium density to multi-family residential?

Mr. Cronin: Right. It’s to the multi-family but isn’t it from something like RD?

Ms. Feeney Roser: No. This is the Comprehensive Development Plan amendment.

Mr. Cronin: Okay, thank you.

Ms. Feeney Roser: For Exhibit A.

Mr. Cronin: I understand. Thank you.

Mr. Firestone: Are there any other questions at this time? In that case, I’d like to invite the developer to come up and make a brief presentation.

[Secretary’s note: During the course of his presentation, Mr. Alan Hill referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public.]

Mr. Alan Hill: Okay, I’d just like to thank everybody for coming out on this beautiful evening, this nice December evening. My name is Alan Hill. I’m with Hillcrest Associates. I’m with Tom Schreier from my office, Bob Bloser, who is the owner of the property, and his son, Jim Bloser. As Maureen has stated already, we’re here for a recommendation from the Planning Commission for a Comprehensive Plan amendment, a rezoning with minor subdivision and site plan approval.

This is the location of the property. So you can see this is the property location and this is Cleveland Avenue as it comes along here. I don’t want to repeat too many of the things that Maureen has already said. We’re around about a quarter of an acre in size and about 60 feet wide of a lot, located between North College and Wilbur Street on the north side.

So these are some of the other redevelopments that have been happening in the area over the last few years. What was mentioned from Maureen was the Campus Walk subdivision, the Cleveland Station subdivision and this 47 West Cleveland. Under construction, as most of you know, is North College Crossing. And these projects we did a few years ago: the Krohe property, the Prettyman Cleveland Avenue property, Hadley Mill, and then we have North Street Commons and Cedar Mill behind it, as well. So those are all redevelopment properties that are in the area around where this property is.

This is the existing home that’s on the property. Constructed in about 1958, Mr. Bloser purchased the property as an investment in 1983 with the intention of it being a student rental, and with the further intention of his sons using it if they were to go to the University of Delaware. Jim actually did. So Jim lived there as a tenant. I’m sure he got a deal on the rent as a tenant while he was at the university. So this has been a rental property for a long, long time, over 30 years. As such, it’s lived a hard life. There are some things that have been updated on the property already. There are some things that are going to be coming up for updating. There’s been repairs to the foundation. There’s some additional repairs that Mr. Bloser’s going to have to be doing to the foundation, again, on a different part of the foundation. Also, it’s due for a new roof and many updates like that, so he felt it was a good time now to see what other people have done in the area and see if he was able to do something similar and upgrade the property, make it nicer for the people driving by and also give the students another nice place to be.

This is a zoom in of the existing site plan. We can see the existing house and the driveway. The driveway is kind of rough around the edges. The cars park in different places on there. So that’s the location on there. As Maureen said, we’ve been in touch with DelDOT. They don’t have any issues with our proposed driveway. It’s in approximately the same location as the driveway currently is, and they just require us to go through their commercial entrance permit.
requirements prior to any construction beginning. One of the other things you see on this slide is the amount of impervious that’s in the general area of these that you can’t see driving by. Most of the properties have been paved over in the back to provide parking, off-street parking, for the students and the tenants that they have there.

The Comp Plan amendment is a little bit odd. I want to focus on the Comp Plan V because hopefully we get a recommendation from you this evening and by the time we make it to the Council, Comp Plan V has been signed by the Governor. So I was trying not to dwell on Comp Plan IV. So that’s why I’m looking at Comp Plan V and I’m not looking at Comp Plan IV this evening. And it has been a big issue with the Planning Commission and the Council making amendments to the Comp Plan. The intent of the Comp Plan is not to fix what is happening now, which the Comp Plan shows, it’s to move and grow with the City as the City redevelops and grows with the property. And I just needed to point that out and not be stuck that the Comp Plan says one thing and we can’t move forward from that point.

Comp Plan V lists the property as a low density residential, which is 1-11 units. We are proposing 12.6 units, or 13 units, per acre, which would need the Comp Plan amendment. If you look on this lower part over here, this is the location of our property here. Right across the street you see the darker shade of yellow. That’s high density residential already, across the street from us. We’re not going in with something that’s very unique to the location. We are surrounded by high density. We have high density up in this area. We have high density over here. High density on the other side of Cleveland. And those are other RM zoned areas as well.

Let me just flip forward to . . . this is a Zoning map of the area and we can see, again, our parcel here. It’s kind of offset because of the development that’s gone on over on the other side of the parcel, but you can see all of the RM districts that we’re surrounded by. We come all the way around, all this blue-green area is all University of Delaware property. So we are surrounded, even though we have this pocket of RD where the property is located. The surrounding predominant zoning is RM for this location. And then you can see these other properties that have been developed that we’ve already discussed – West Cleveland Avenue, Cleveland Station and Campus Walk – all zoned RM, all similar redevelopment-type projects.

Here you can see . . . this slide is a little difficult to read but the reason we put this in, you can see this is the proposed . . . the microphone is in my way . . . the proposed building sits here. And you can see that we’re actually further away from the property line from the existing building on this side of the property, where this other driveway is. So we just wanted to show that. That, even though we’re asking for a lot of deviations from the RM zoning, we’re actually improving some of the conditions that we currently have as part of that.

If I move forward, this is an easier rendering to see. You can see the three units. You can see the 24 foot wide driveway. All our green space around it. The proposed landscaping that we show on here. And the porte cochere, which I, also, have been practicing all day.

Ms. Feeney Roser: You did it well.

Mr. Hill: So I would be in trouble if I didn’t get that one right. That’s the one shot at it. So as far as the zoning goes, we are asking for several deviations from the RM zoning. The minimum lot size, which is an acre for an RM zoned property, we’re at 0.237 acres. Our maximum lot coverage is 20%. We’re proposing 35.6%. Our minimum open area is 40%. We’re actually only at 36.1% so we’re actually very close to the open area required by the RM zoning. RM also requires a 30 foot setback from the street, but as Maureen said in her notes, if the properties adjacent are the same RM zoning, we only line up with the majority of the buildings on the street. We’re actually 15 ½ feet back from the existing street. Now one of the deviations we’re asking for is a setback from the property lines. RM zoning requires a 25 foot setback from the property lines. When we have a 60 foot wide property, the 25 feet leaves us with 9 or 10 feet of building envelope in the center of the property that would be the only place we’d be left to build on based on the setback from the property lines. So we have, actually, just to clarify, we
have 8 feet on the western side . . . wrong clicker . . . 8 feet on the western side down here, and
we have 1 foot on this side, but that's actually the porte cochere. That's not living space.
We’re actually 24 feet from property line with the living space on this side, but we have 1 foot
because of the extent of the building there. The rear yard, we’re required 25 feet and we’re at
24.5. And then the side yard requirements for a property within the RM zoning, if it was being
created on a lot line, would be 20 feet. And we have the 8 feet and the 1 foot again.

So these are, again, these are the other developments that we have in the area that we’ve
talked about. And this gives you a little bit of idea of where we are with our property. How it
ties in with the other properties that have been redeveloped and how we match them as best
we can. So we’re at the 12.6 units per acre and we’re at the 63.3 bedrooms per acre. I’m just
going to go from left to right, as best I can here, to point out that Campus Walk is 15 units per
acre and 72 bedrooms per acre. Cleveland Station, that was recently approved, 17 units per
acre, 69 bedrooms per acre. West Cleveland Avenue, 13 units per acre, 78 bedrooms per acre.
We’re better than all of those. We’re not asking for the same level of density as these projects
that have been approved recently. North College is a BB district. It’s a little bit different. But
they have 36 units per acre and 76 bedrooms. The Krohe property, which is a property we did a
few years ago, is actually the only one on this map that you’ll see that has less density than
ours. It has 12 units per acre and 71 . . . sorry, 10 units per acre and 52 bedrooms per acre. The
adjacent property to that was the original property that we redeveloped on Cleveland Avenue.
Again, this was 12 and 71 bedrooms per acre. They’re all very, very similar to what we’re
proposing. What we have is very much in keeping with the area and what we anticipate the
City’s plan for the area is.

LEED certified, to comply with the site plan approval, we’re proposing right now 47 points. Two
more than the required 45 points. We do have the potential, going through the design process
at CIP and the construction drawings, of increasing that based on materials used, low odor
paints and things like that. We can improve that LEED requirement a little.

I want to talk about the building elevations a little bit. This is a very unique building. Hillcrest,
because we keep everything in-house . . . I have to do my little Hillcrest pitch now . . .
everything is in-house. We’re land planners. We’re architects. We’re engineers. We’re
surveyors. We do everything in-house. So we work as a team. Everybody is working together
on coming up with what we think is the best potential for the property that we have. And this
property, we originally did a narrow, long building. It didn’t have a lot of presence. We sat
there and asked what can we do, how can we make it better. We came up with the porte
cochere. It gave it some presence on the street. It’s unique. I don’t know of any other
properties in the area that have this. And it defines the building, and we’re very happy with the
way it came out. The client is happy with the way it came out. It ties into the wall that we
show running down the property line. That’s actually a very slight retaining wall. It provides a
little privacy. It screens the garage doors. It does a lot of things for the property. So we have
this. We’ve developed this elevation mainly. The back elevation we haven’t really developed
fully. It will be of similar materials, similar sort of look.

So moving on to the interiors of these. We provide all our parking inside. We’re required three
parking spaces per unit. Each unit has the three spaces inside. This way the cars are out of
sight. We do a good job of getting the cars off the street, hiding them and making the place
look neat. Everywhere is good. If I just move forward, so these are the concepts for the inside
of the building. They’re pretty much how they’re going to be. They’re . . . we have the main
living space and two bedrooms on the second floor and then the remaining three bedrooms on
the third floor. With all these redevelopments, the buildings are upgraded massively from what
we have now. We get the sprinkler systems. We get the fire alarms. Mold removal. All of
these things make the building a lot healthier to live in, a lot safer to live in. We’re told that the
students respect the buildings a little bit better when they’re newer and taken care of. We see
it as a benefit for the City and the surrounding areas.
So I just want to sum up that we are looking for a recommendation. This is the side view. This, unfortunately, after construction will be blocked by the building next door. So we’re looking for a recommendation, like we said, for the Comp Plan amendment, the rezoning and minor plan with site plan approval. So, with that, if you have any questions . . .

Mr. Firestone: We’re going to take public comment first.

Mr. Hill: Okay.

Mr. Firestone: No one has signed up but does anyone wish to address the Commission? Please step forward, Mrs. White.

[Secretary’s note: Planning and Development Department Secretary Michelle Vispi approached the dais with copies of an email received by the Planning and Development Department and that had been brought to her attention after the start of the meeting. Copies were distributed to the Commissioners and Director.]

Ms. Feeney Roser: Chairman Firestone . . .

Ms. Vispi: This email was brought to my attention after the start of the meeting . . .

Ms. Feeney Roser: There are . . . is it one email?

Ms. Vispi: It’s one email. There is a copy for everyone.

Ms. Feeney Roser: There is a copy for everyone.

Mr. Firestone: One minute, please. Please go ahead.

Ms. White: Okay. Jean White, District 1. I have no objections to tearing down the existing house and building another building in its place. However I do oppose many aspects of what is being built instead.

First of all, I object to changing the zoning from RD to RM. I consider this spot-zoning. Everything else along there is RD, as well as the next areas at Prospect Avenue. Basically that north side. I object to the change of the Comp Plan. At the moment it’s Comp Plan IV, which would be medium density 4-10, and Comp Plan V coming along, it would be under what’s called low density, up to 11. This is 13 units per acre, so its makes it up into the higher amount.

I have comments about site plan approval. There are cases where site plan approval does make sense. For example, if there’s an odd shaped lot or if there is rock outcroppings or trees or a pond that needs to be avoided. In this case it’s a very rectangular lot and, in my opinion, something could be built on it that would not need site plan approval. I do feel that sometimes developers have used this predominantly to pack more units in, rather than because there’s something about the particular lot that needs site plan approval. And in this particular case, the maximum lot coverage should be 20% and, as the applicant’s spokesman pointed out, it is 35.6% coverage.

Also, I feel that the comparison for three properties at 47 West Cleveland, Cleveland Station and Campus Walk, they’re much further away. They’re not east of North College but west and much further away. And they’re larger properties, not a tiny, little property of 0.26 acres . . . I don’t have the exact amount here.

So, at any rate, I also feel that if this is approved that it’s going to be . . . all the dominos are going to fall out. This is going to send, not only for improving properties on the north side of Cleveland Avenue . . . which, actually, I love some of those properties. I don’t know how many other people do, but I’ve taken pictures of every single one and some of them are unique and
have a certain charm. They could be fixed up by their landlord that’s renting to students. But they’re very nice. And I see that happening, that this will be the, basically encouraging every single owner to convert to RM. And I think there might be somebody in the room now who might think of doing that.

What I’d like to propose instead is keeping the RD zoning and the owner and developer putting, instead, a two-and-a-half story house where you enter from the first floor, which is nice . . . most of us live in houses where you do enter and don’t climb up stairs to the second floor . . . and have five bedrooms in it, which would mean you would need three parking places and those could be behind the building driving on the level. Or, as an alternative, even though that’s what I would like myself, is to make the zoning change to RM but only allow a two unit apartment building with four bedrooms rather than five bedrooms. So it would be very much like what you have here but if you just took the first two-thirds of it, basically. And then you would need, if you had two units of four bedroom each, you would need four parking places. Those could be underneath. But what that would do . . . and I don’t know if the applicant could put on again the aerial view of the property. I wanted to point something out. Okay, not that one but there was one showing all the macadam of the neighboring properties. Yes, this one. This was [inaudible] to me because when you’re driving along Cleveland Avenue, unless you stop and look behind, one can imagine this is the case, but you don’t actually see how all the back has been macadam for all the parking. And if what I was proposing, even if you went ahead with the RM zoning but you made it only two apartments, you would have, not only would you probably be under that 20%, I would think, for coverage, we’d have to figure it out, but it would enable . . . this property is, in one sense, almost a little unique. It’s not macadam all the way to the back and would allow some common space for those who are living there and more . . . I guess my time is done . . . but more grass, landscaping and everything there. And I think it would be more attractive. So I have these two different possibilities that I am proposing and I thank you for listening to me.

Mr. Firestone: We thank you for your comments.

Ms. White: Oh, and actually, could I just say one other thing. Let me just . . . I noticed this was the elevation of the building and yet in . . . let me just see here, I’ve got to find it . . . in the developer’s sheet describing the property it said the primary exterior materials will include old world stone, brick, stucco and manufactured wood. All elevations of the building, even those not obviously visible from the public, will receive use of these materials. But this, I guess it would be the west side, looks very plain. It doesn’t have that on it. So I don’t know if that’s going to be changed if you did go through with this or you didn’t go through with it. Thank you very much.

Mr. Firestone: Thank you. Is there anyone else here tonight that would like to make a comment?

Mr. Glenn Schmalhofer: I suppose I would.

Mr. Firestone: Can you please step up to the mike and identify yourself for the record?

Mr. Schmalhofer: Let me adjust it here. I guess I hit the green button? Are we under a time constraint, or no?

Mr. Firestone: We’re generally trying to stick to around 3 minutes.

Mr. Schmalhofer: Okay, let’s see how we go here. Oh you got . . . you’re timing. My name is Glenn Schmalhofer. I’m the owner of 36 East Cleveland Avenue, so it would be the property just to the left of the subject property. I’ll tell you what, I’ve been there, I’ve owned that property not as long as Bob, but I’ve been there awhile. Since 1999 I’ve owned that one. I just want to say to begin with, Bob’s a great guy. We’ve had to work together on some things and never really, no issues. He’s a good guy. So it’s nothing about that. But, I mean I’ve done some
additions, some work on 36 East Cleveland Avenue and I’ve been very regulated by the City on what I can do, right down to like ridiculous, ludicrous. Cubic volume calculations. Just very restricted to what I could do and what I could build. And it was really even tough to conform. It really limited my construction to what I could do. I was looking for a little bit bigger bedrooms and a little bit bigger decks, and I just couldn’t do it by the Code. This project here is, and I’m not being smart when I say this, does this project conform to anything for RM zoning? Because it looks like it exceeds everything. Does it even meet the height requirement of 35 feet? Does it meet anything? It just seems to me, with all due respect, it’s just too much. It’s too much. Unless, you know, I’m in the same business . . . if the City’s going in the direction of, you know, it’s going to be all RM zoning, then maybe we need to discuss that. If it’s going in that direction, then maybe I’m looking at this the wrong way. But, like I said, anytime I’ve tried to do anything in the past, I’m very restricted. But are we going to go the other way? Are we going to change the rules? Am I going to be allowed to come in and do the same thing? So . . .

Mr. Firestone: Thank you. Is there anyone else who would like to speak? We did receive one email from Susan Grasso and it’s available for anyone who wants to take a look at it. It’s been shared with all the Commissioners.

Unidentified Speaker: What did it say?

Mr. Firestone: Well it’s rather long. I don’t know if I want to read the whole thing but it goes . . . point #1 discusses the possibility of adding a walkway for residents that connect their building access doors to the sidewalks. The second item goes into the issue of bike parking. It’s unclear how many bikes are going to be accommodated. There are some issues about bikes. And then the third item is about building design. They have a concern that the style that’s being adopted has to do with the elimination of a public/private transition zone. Can this design be modified to include an outdoor community space, porches, decks, outdoor seating to promote a neighborhood character? That’s really the gist of that email. And it’s available up here for anyone who wants to read it head to toe. With that, I’d like to open up the discussion or questions from the Commissioners of the developer, and any further questions of the Department.

Mr. Stozek: I’ll go first. Bob Stozek. When I look through the Planning Department’s report, talking about traffic and police, one issue I have which wasn’t referenced in here is fire department access. And can somebody talk about that considering the size of this plan and the size of the lot and the access roads?

Ms. Feeney Roser: May I . . .

Mr. Hill: We’ve talked to the City about the fire access and that’s where we have to raise the porte cochere to 14 feet from the 13’ 6” which was a State requirement. The City’s fire department has a requirement of 14 feet for the access under the porte chochere. So they’ve look at it. They don’t have any issues. The buildings, again, will be fully sprinklered for safety there. So the fire department has looked at it. They don’t have any issues other than raising the clearance under the porte cochere.

Mr. Stozek: How do they access it from the west side?

Mr. Hill: They don’t actually have to access it from the west side. They only really need access from the street. Their equipment will reach in the rest of the way.

Mr. Stozek: How tall is the building?

Mr. Hill: It’s 35 feet. It meets the requirements of the City.

Mr. Stozek: Okay. I guess I have a couple of issues. One is I presume that we have codes and we have a comprehensive plan for a reason. You know, it’s not to make the City static, but is to
exercise some control over how development takes place within the City. And we’re open to changes and whatever. But when I look at this and I see seven major deviations of Code in distances here, particularly only having one foot clearance on the east side of the property, that’s a concern to me. And then the eighth issue is we’re asking for a waiver of the Plan to go up to 13 units per acre. I understand you were comparing this to some of the other recent developments on the south side of Cleveland Avenue. And from an appearance standpoint, I understand that, but the thing that bothers me is the size of this lot and the orientation of the building compared to what’s on the other side of the street. This is such a substantial change to the character of the neighborhood. That’s one of the things that bothers me. And, as the gentleman said, if this is approved, what’s going to happen if the other three or four lots on the street do the same sort of thing? What are we left with? And nobody can predict that but I’m always concerned about the incremental changes within the City. We approve something on a once-type thing and then we start getting additional changes and we have compounded problems building up. I just think it’s too much. I kind of agree with Mrs. White. If there were two units instead of three, perhaps that would be better, leaving more open space or whatever for the residents, as well. Those are my comments.

Mr. Hill: Can I respond to those?

Mr. Stozek: Sure.

Mr. Hill: The two units to the three, the RM zoning with the garden apartments prohibits us from doing two units. We have to do a minimum of three units with that zoning requirement. We made that mistake before when we tried to do something with two units in an RM zoning. We didn’t do very well at a Board of Adjustment hearing. So we feel that our hand is tied with the RM zoning to go into the three units. The RD zoning that we currently have now is a single family, either attached or detached, zoning. And even though many of these houses existing on Cleveland Avenue have a duplex or a twin on the property, there’s nowhere in the Code that allows us to build a duplex or a twin on one property. We’d have to subdivide that property. So if we subdivide the property, we actually have to create two parcels to do two lots that would be RD zoned. We’d have similar deviations that we would have to ask for as what we’re doing now. We’d be asking for lot width. With that, we’d be asking for setbacks. We’d end up with a very narrow pair of units with the required driveway to the back. The RD zoning doesn’t let us, really, develop the property by itself. It’s something that we’d have a hard time developing something that was cost effective in any way. So that’s the reason why we’re asking for the RM zoning and why we’re looking for three units and not two units. Just to let the Commission know that.

Ms. Feeney Roser: May I just . . . the RM zoning and the three units is based on the definition of multi-family. That’s what you’re talking about.

Mr. Hill: Yes, that’s correct.

Ms. Feeney Roser: In this case, we are asking for site plan approval which would allow deviations from the Code for those. But it is a point.

Mr. Hill: Yes. No, I appreciate when you clarify what I say because sometimes I know what I mean but sometimes it doesn’t come out right.

Mr. Firestone: The problem I have it’s compounded by what’s already been discussed. So we’ve got a Comp Plan V that’s not yet approved and we’re now seeking to amend it before it’s even approved. And, indeed, there seems to be a suggestion that we should just change all of Cleveland Avenue. And, again, we don’t even have an approved Comp Plan yet but we’re already thinking of sort of implementing a pretty large and substantial change. We’ve got a proposal that, even in that, has a whole host of deviations and while it’s got a nice environmental design, I do not consider this project to be leadership in energy. LEED is Leadership in Energy and Environmental Design, and it seems that if we’re going to have this as
our, sort of, project that’s going to set a standard for what others might do if they want to change, we ought to have leadership in energy. Instead we’ve got no points on optimizing energy performance, no points on insulation, no renewable energy and on and on and on. We don’t even have following in energy. And so we have a project that maybe looks aesthetically nice from the curb but is not, in my mind, a 21st century project. It’s a design project from the last century.

Mr. Hill: Can I just address the LEED and the insulation...

Mr. Firestone: Yes.

Mr. Hill: Just so that you... the LEED points were created prior to the International Residential Code, Energy Code 2015, which is what the City is working under now. Their standard insulation values exceed that of what is required in the LEED points, so we cannot claim any on there because we have to comply with the current energy code. So we’re already exceeding the LEED points of the LEED requirement and we’re not allowed to take anything from it because it’s just the way the points system works. It’s not the best system, it’s just a guideline that we have to work within and that’s why I said we can get the 45 points but there’s other points that we could have if we really went there. So the LEED points for insulation is if we exceed the amount of insulation required, and...

Mr. Firestone: Right, but the 45 points is certified.

Mr. Hill: Yes.

Mr. Firestone: We can say 60 is silver, 75 is gold and 90 is platinum, so it’s, again, in my view of it, it’s not a 21st century design that would justify this fairly large structure and changing the whole character. If we’re going to change the character of Cleveland Avenue, we ought to do it right. That’s my view.

Mr. Hill: Okay.

Mr. Silverman: I’ve got a number of mixed feelings on this project. I don’t like being in this Neverland between comprehensive plans.

Ms. Feeney Roser: Neither do we, for the record.

Mr. Silverman: And I’m going to say, for the record, that goes right back to the State and their requirements and their inability to properly administer their own land use regulations. Secondly, we’re dealing with an area that, in my mind, should not even be thought of as residential. It’s incoming-producing property. If you look at the assessment database that’s used in Newark, these are commercial properties. That’s the way they’re assessed. They are not assessed as residential properties. So the character of this area is primarily commercial, incoming-producing. The parcel layout dates from the early part of the last century. It makes no sense today. Ms. White hit on it. The Chair touched on it. I’m beginning to think that we made an error when we proposed Comp Plan V and did not properly look at the potential use for this entire super-block. As was pointed out by the applicant, the kind of zoning that’s being asked for here exists all around this area, and I’m not sure now why this area was left in the last century’s duplex workers’ housing style. The housing, as the one landlord mentioned, has been added onto, added onto. I’m sure the units along there are not sprinklered. They don’t meet, for the most part, the older sections don’t meet modern Building Codes. They’re rapidly going to find themselves in a position where they cannot compete in the rental market. Who is going to want to live in a 1919 house and pay a $600 per month heating bill and have a deficient electrical system when they can pay the same amount of money and live in a modern structure? Although I find this an intrusion in the literal sense, that it doesn’t match what’s on either side, it’s no different in character than the house next door to the west that apparently was a residential duplex unit that’s been added onto in the back, and extended in the back. The
applicant mentioned that they would be conforming to sediment/erosion control run-off regulations and all the DNREC requirements. The asphalt, the amosite, that’s shown on either side of the property, I’m sure drains directly down onto Cleveland Avenue. This particular project would be capturing that water and, if not containing it, probably recharging it into the ground. So it would be reducing some of the run-off proposal.

The Code, as described by the applicant, and as discussed by the Director, shows we have some conflict in purposes. If the setback on this property were to be met, I believe the applicant said they would have a structure about nine or ten feet wide with 25 foot side yards and a 60 foot wide property. So we have something that is reaching the point where the lot configuration, the deep and narrow, is virtually unbuildable for today’s market. Right across the street is located the type of structure and the intensities and densities that are proposed on this parcel. And although some could say this is spot-zoning and intrusion, I think this shows the market need and today’s realistic building land cost situations for reconsidering the entire super-block. And even with the deviations that are being sought through the plan review, I’m going to support this particular proposal. I think it offers an opportunity to redevelop this area. Its dominant use is student rental housing, and I would rather have that particular kind of activity concentrated than spread throughout the Newark community.

Mr. Firestone: Anyone else?

Mr. Stozek: Can I ask Maureen a question?

Ms. Feeney Roser: Sure.

Mr. Stozek: If we wanted to go back and take this, what’s being referred to as the super-block area, and redefine it in the Comprehensive Plan, what would that take?

Ms. Feeney Roser: It would take another Comp Plan amendment, certainly, depending on whether or not the Governor signed it. And the issue really, and why we didn’t do that, and Mike may want to speak to this, but the reason we didn’t was because the State law requires that we rezone every property to match the Comp Plan within 18 months. We did try that back in the 80s and it didn’t go well. So we have left everything as the zoning and the existing land use and when you look at a property, you can see whether or not it can meet the area requirements of a high density zoning district. And those properties that didn’t meet the requirements, we left alone. But it is possible to go back and re-do the Comp Plan to designate this area as high density but then we would have to go back and rezone every parcel.

Mr. Stozek: What would you guess as to how long would it take to go through that process?

Ms. Feeney Roser: To rezoning the entire block? It would probably take us a couple of months. We would have to get the Comp Plan amendment on first, get that approved, and then go back and rezone.

Mr. Stozek: It might take him a couple of months to sign it.

Ms. Feeney Roser: Probably six months, actually, I would think, by the time we got that finished, if we could accomplish it.

Mr. Firestone: Any other discussion?

Mr. McIntosh: Yes.

Ms. Feeney Roser: Look at Frank talking into the microphone.

Mr. McIntosh: I love this microphone. I also think it’s time that many of our communities that are older in nature, and I think Cleveland Avenue would certainly qualify for that, get along and
I don’t really have any problem with changing the nature of what’s there and, as a matter of fact, I think it’s a good idea to change the nature of what’s there, and to see more and more housing like that going in. I think that changes the character from what it was to something that it can be. And the “can be”, in my opinion, is much better than what it was. I do have a problem with the Comp Plan, and what one is saying and the other is not, and all the deviations that it takes, etc., to do that. And it seems to me that we shouldn’t be amending a Comp Plan that doesn’t exist yet. Somehow that’s... I have a problem with that too. I don’t really know where I am on this, I’m still thinking about it. But I would say that I don’t have any problem with changing it. I think that it’s pointing out a problem with the Comp Plan itself that hasn’t been discovered. And so perhaps we can thank you for bringing this to the forefront. I don’t know what to say about it, but I really do think that this is a big issue, if this is going to keep happening. If these gentlemen don’t get this plan, somebody else is going to bring another plan with another property like that. We’re going to keep getting them and we don’t have the means by which to really address them because the Plan doesn’t meet the needs of that community that we’re talking about. So I don’t know. You got a couple of years before you build? We probably could get that done. I think the idea of amending the Comp Plan is a good idea. I think it’s ludicrous that we’d be amending something that hasn’t been signed yet. It tells you something about the planning process, I guess.

Mr. Stozek: I basically agree with some of your comments but, again, the Comp Plan is what we have. And what I have a problem with is constantly making amendments to the Comp Plan. We can have another discussion another day about whether it’s actually amendment, is what we’re doing. Because we’re not changing the Comp Plan. For instance, to now say it’s up to 13, what we’re doing is saying for this project, we’re waiving the Comp Plan requirements. But we can argue about that another day. I just have a real problem with it. Regardless of what we think the future of this area might be, if we have certain rules right now and principles that aren’t supposed to be taken lightly, and we’re being asked to violate seven or eight of them. I sympathize with you because if the lot was twice as wide as it is now, you wouldn’t have any problem with that. But it’s just what it is and where it is. And I think at that location, at this time, it’s just too much. That’s just my opinion.

Mr. Firestone: Alan?

Mr. Silverman: We’ve been here before. We’re hung up on the notion of densities being associated with the Comp Plan. I recall that the State of Delaware’s Planning group advised us against using densities. They wanted us to represent this area as predominantly residential. And then let the zoning and the site design determine what the densities are going to be and how the neighborhood is going to look. But the path that we took was trying to assign densities. What we end up with is a circumstance here where we’ve got a 60’ x 200’ deep lot...

Mr. Hill: That’s correct.

Mr. Silverman: And we have to calculate densities on a quarter of an acre based on the number of bedrooms. That makes no sense. I live in a neighborhood that has five bedroom houses on a quarter of an acre. What does that density work out to?

Ms. Feeney Roser: I’m sorry, if I could clarify. The Comp Plan designation is based on units per acre and not bedrooms. Bedrooms are not a Code requirement.

Mr. Silverman: Okay. Thank you.

Mr. Firestone: I guess at this point, the Chair would entertain a motion.

Mr. Cronin: Mr. Chair, I move we accept the recommendation as presented by the Director of the Planning Department.
Mr. Firestone: Now if I understand, Maureen, there are actually three different recommendations and I guess we would vote on them sequentially. Is that correct?

Ms. Feeney Roser: Yes. I think, Bruce, that’s the way we’ve done it.

Mr. Herron: Yes.

Mr. Silverman: Point of information, we’re referring to page 13 in the Department’s recommendation. Is that correct, Madame Director?

Ms. Feeney Roser: The recommendations? Yes.

Mr. Cronin: Alright, so I’ll make it for recommendation A on page 13.

Mr. Firestone: Okay. So there’s been a motion to recommend that City Council revise the Comprehensive Development Plan IV and further that Comprehensive Development Plan V land use guidelines for this location be revised. Is there a second for that motion?

Mr. Silverman: I’ll second it.

Mr. Firestone: Any discussion? All in favor, signify by saying Aye. Opposed, say Nay.

Ms. Feeney Roser: A show of hands, please.

Mr. Firestone: Can we have a show of hands? All in favor, raise your hand. Three in favor. Opposed? Motion passes 3-2.

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

A. THAT CITY COUNCIL REVISE COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINES FOR THIS LOCATION FROM SINGLE FAMILY RESIDENTIAL (MEDIUM DENSITY) TO MULTI-FAMILY RESIDENTIAL (MEDIUM TO HIGH DENSITY) AND FURTHER THAT COMPREHENSIVE DEVELOPMENT PLAN V LAND USE GUIDELINES FOR THIS LOCATION BE REVISED FROM LOW DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL, AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A DATED DECEMBER 6, 2016.

VOTE: 3-2

AYE: CRONIN, MCINTOSH, SILVERMAN
NAY: FIRESTONE, STOZEK
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED

Mr. Firestone: Do we have a motion regarding the rezoning of the property?

Mr. Silverman: I’ll move that we rezone in accordance with the Director’s recommendation that the City Council approve the rezoning of 0.237 acres from the current RD, one family semi-detached, zoning to RM, multi-family dwelling/garden apartments, as shown on the Planning and Development Department Exhibit B dated December 6, 2016.

Mr. Firestone: And we’re going to do a show of hands. Is there any discussion first?

Ms. Feeney Roser: Do we have a second?
Mr. Firestone: Oh, excuse me. Is there a second?

Mr. McIntosh: I’ll second.

Mr. Firestone: Is there any discussion? Then we’re going to do a show of hands. All those in favor, please raise your hand. Three yes votes. Opposed? Motion carries 3-2.

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

B. THAT CITY COUNCIL APPROVE THE REZONING OF 0.237 ACRES FROM THE CURRENT RD (ONE FAMILY SEMI-DETACHED) ZONING TO RM (MULTI-FAMILY DWELLING – GARDEN APARTMENTS) ZONING AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT B DATED DECEMBER 6, 2016.

VOTE: 3-2

AYE: CRONIN, MCINTOSH, SILVERMAN
NAY: FIRESTONE, STOZEK
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED

Mr. Firestone: That gets us then to Item C. Is there a motion regarding Item C?

Mr. Cronin: Mr. Chair, I’ll make the motion to recommend that City Council approve the 40 East Cleveland Avenue minor subdivision with site plan approval plan as shown on the Hillcrest Associates, Inc. plan dated March 21, 2016 with revisions through August 30, 2016, with the Subdivision Advisory Committee conditions, as stated.

Mr. Firestone: Is there a second?

Mr. Silverman: I’ll second.

Mr. Firestone: Any discussion? Again, we’re going to have a vote by a show of hands. All those in favor, please raise your hand. Three votes in favor. Opposed? Motion carries 3-2.

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

C. THAT CITY COUNCIL APPROVE THE 40 EAST CLEVELAND AVENUE MINOR SUBDIVISION WITH SITE PLAN APPROVAL PLAN AS SHOWN ON THE HILLCREST ASSOCIATES, INC. PLAN DATED MARCH 21, 2016 WITH REVISIONS THROUGH AUGUST 30, 2016, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS.

VOTE: 3-2

AYE: CRONIN, MCINTOSH, SILVERMAN
NAY: FIRESTONE, STOZEK
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED

Mr. Firestone: Congratulations, gentlemen.

Ms. Feeney Roser: Thank you.
Mr. Hill: Thank you very much.

4. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AS THEY RELATE TO ALCOHOL PRODUCTION, SALES AND RELATED ACCESSORY USES.

Mr. Firestone: Okay, the next item on the agenda is review and consideration of amendments to the Zoning Code as they relate to alcohol production, sales and related accessory uses. Mike, can you briefly lead us through this?

Mr. Fortner: Yes, sir. I'll only take 2-3 minutes. I just want to go over, kind of, the major changes from the last meeting, just to try to cover briefly what we tried to do. On the bottom of page 1 you'll see the four criteria that we got from the Planning Commission that our changes centered on. The first one is remove overly restrictive language and regulations. We tried to remove one of the things the Planning Commission asked by taking out the requirement that they give tours and have tasting rooms and have classes. They tend to do that anyway so why make it a requirement. So we took out the restriction. We also took out the section on, we're calling it beer gardens. And beer gardens, we took that out, but the requirement that all residents have to approve it within 200 feet, we took that out as well. We found those overly restrictive.

The second thing addressed is the non-conformity between State definitions and City definitions. We used the State definitions for micro-brewery and craft distillery. We took out craft brewery. We also took out craft winery because that refers to a garden winery which requires the grapes be grown on-site, and we probably wouldn't get one of those in Newark. It's not feasible. So we just took out regulations on that, pending any regulation change. In BC, the breweries that they have in State law can go up to a larger amount, and we wanted to focus on smaller type of micro-breweries or distilleries in the BC, so we put a cap on that.

The third thing we did, the Planning Commission asked that we simplify the ordinance so we had the ordinance, the regulations, spread out over several sections, and we tried to take them all and we put them in section 32-56.4(g), where we go for all the alcohol regulations. So we do have some definitions that make the Code reader-friendly. Then we go to the zoning districts and we see micro-brewery and distillery, that's it, except for BC where we do put the cap on it for the amount of manufacturing. And then you go to section 32-56.4(g), and that's where all the regulations are, including the regulations for what we originally called beer gardens. Since the State doesn't have a provision for beer garden, we call it open air seating area, and we put the regulations on it also. People can go to one section and get all the regulations in that one section.

The fourth thing we did is we clarified the off-street parking requirement. We had kind of a general one parking space for every 200 square feet devoted for sales. We clarified that more so it's one for 200 feet of floor area devoted to on or off premise sales, serving and consumption of alcoholic beverages on the premise.

And finally, we made just some very slight changes to existing Code that were developed for restaurants. There were a couple of places where it said facilities when we developed the Code and it was when only restaurants could serve alcohol. And so sometimes we just said facilities, but we needed to clarify, and there's two or three places where we clarified that that regulation pertains to restaurants. It doesn't pertain to the other things. They're just clarifications. And there's also a repeated sentence in one area of Code that we're taking out with that, as well.

And they are the only changes. Those are existing regulations that Council put intact. We don't want to change those in any way. We want to add micro-breweries and regulate micro-breweries without changing existing laws for restaurants and other facilities, so we clarified that better. And we believe this proposal better does that. That's it.
[Secretary’s note: The Planning and Development Department report dated November 29, 2016 regarding proposed amendments to the Zoning Code as they related to alcohol production, sales and related accessory uses reads as follows:]

**Background**

As the Commission knows, the Planning and Development Department has received several requests from potential business owners to open micro-breweries in the City. Specifically, the Department has been contacted about opening a production facility with a tasting room and distribution operations; and two micro-breweries with tasting rooms and beer gardens, one with and one without limited food service. None of these uses are permitted under the current Zoning Code. The Code does permit brew pubs with a special use permit in certain zoning districts, where the brewing is actually accessory to the permitted use of operating a full-scale restaurant (for example, Iron Hill Brewery), but it does not permit the production of alcohol as a primary use. Considering the volume of interest, the compelling statistics on the growing number of micro-breweries and micro-distilleries nationwide, and the potential positive impact on local economic development, the Department requested and received direction from Council to consider amending the Code to permit some or all of the desired uses as conditional uses in Newark. In other words, the Department received confirmation that Council would like us to consider amendments to the Zoning Code to permit the small scale production of beer, wine and spirits, along with associated alcohol sales in certain zoning districts, with a special use permit and specific conditions.

To this end, the department prepared a report dated October 24, 2016 containing research and proposed Zoning Code amendments to permit alcohol production, sales and accessory uses, which is attached to this report (B). The commission reviewed the report at their meeting held November 1, 2016 and eventually, after input from the public, decided to table the review until edits could be made to the report to clarify the legislative intent and strategy suggested. Specifically, the Commission requested, among other suggestions, the following:

1) Remove overly restrictive language and regulations.
2) Address the non-conformity between State definitions and City definitions.
3) Simplify the ordinance.
4) Clarify off-street parking requirements for “sales area.”

**Revised Proposal**

This report attempts to address the issues raised with the previous report with the goal of reaching a consensus on amendments to permit the small scale production of alcohol, along with some accessory uses involving the sale and consumption of alcohol on and off site while, at the same time, safeguarding the quality of life for Newark residents. To do so, we reviewed State Code; Title 4, Alcoholic Liquors and found it to be clear and concise, but perhaps too broad and general to fully meet our goals for the legislation in Newark. For example, the State law would allow Microbreweries on a much larger scale than we believe will be appropriate in all zoning districts contemplated, and does not detail all the restrictions the department believes are important to safeguard quality of life in areas surrounding the uses. Therefore, we suggest building upon State law to create legislation appropriate for our community.

To do that, we suggest code amendments be considered to:

1.) Create Newark specific definitions, which compliment State definitions, to ensure consistency and applicability.
2.) Add the newly defined uses to the list of conditional uses, which require a Council granted special use permit, in specific zoning districts (BC, MI, MOR).
3.) Determine appropriate restrictions and/or conditions for operations to address quality of life issues and apply them to the Special Use Permit criteria.
4.) Determine the appropriate parking requirements.
5.) Make housekeeping amendments to the Code to allow for the inclusion of the conditional uses created, without impacting current Code mandates for other uses.

1.) **Definitions – we recommend including the following definitions for uses in Code Section 32-4:**

**Distillery, craft:** A single establishment in which spirits are manufactured, and is operated by the licensee in accordance with State Law.

**Microbrewery:** A single establishment in which beer, mead and/or cider are manufactured, and is operated by the licensee in accordance with State Law.

**Open-air seating area:** An accessory use, with impact, to a microbrewery or craft distillery which is an open air, roofed or unroofed area where the alcoholic beverages produced onsite are served or consumed and is operated by the licensee in accordance with State law.

**Taproom:** An accessory use, with impact, to a microbrewery or craft distillery as a place for the sale by the glass and for consumption on the premises of alcoholic liquors produced onsite, with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

**Tasting room:** An accessory use, with impact, to a microbrewery or craft distillery establishment as a place for the consumption of spirits and beer produced onsite for the purpose of sampling for prospective purchase only. The quantity of any sample is not to exceed 1 ounce for beer and ½ ounces for spirits.

**Discussion**

State regulations allow microbreweries to produce as much as 2 million barrels (approximately 62 million gallons) of beer, mead or cider, and allow craft distilleries to produce up to 750,000 gallons (approximately 24,193 barrels) of spirits in a calendar year. We believe these quantities to be beyond what we envision for commercial areas in Newark. In addition, we believe that there is a difference between large scale manufacturing of alcohol in industrial areas and those in commercial areas which might be very close to residential developments. Therefore, we suggest using the State definitions and then limiting the size of the facilities in the BC zoning district to something right sized for Newark. As a result, the definitions proposed are consistent with State definitions, but size is further regulated in the BC zoning district.

Also, while we use the State law definitions for taprooms and tasting areas, these definitions do not specify that those uses must be accessory, and not stand alone uses. Therefore, we suggest that if we are to permit taprooms and tasting rooms as accessory to the primary use of producing alcohol that we define them to correspond to our purposes.

Finally, because State law requires that wineries grow grapes on site and land for such agricultural uses in Newark is severely limited, we do not propose adding wineries at this time. If, in the future, the State law changes to allow the importation of grapes to produce wine, or if we have a proposal for a winery which can meet State law, we can revisit amending the Code to permit wineries.

2.) **Add the newly defined uses to the list of conditional uses, which require a Council granted special use permit, in specific zoning districts:**

To permit microbreweries and craft distilleries, as defined above and as allowed under Delaware State Law, in specific zoning districts, the Planning and Development Department suggests amendments adding these uses to the conditional uses permitted in BC, MI and MOR
districts, along with specific special use permit conditions that deal with the sale and delivery of alcohol as accessory uses, with impact.

Discussion

The Planning and Development Department suggests, at least at the outset, adding the use with proposed conditions in three zoning districts as conditional uses requiring a special use permit. Specifically, we suggest the BC (General Business), MI (General Industrial), and MOR (Manufacturing Office Research) zoning districts as appropriate for the uses. These districts are proposed because MI and MOR, as industrial districts, are appropriate for the larger scale alcohol production and distribution activities of microbreweries and craft distilleries; and because BC (General Business) is a broad commercial district which, for the most part, does not include properties in the downtown business district, it is appropriate for smaller scale alcohol production uses. Limiting the commercial district in which the production of alcohol is permitted to BC is suggested as it may stimulate economic growth in areas which are currently under-utilized, particularly shopping centers, as opposed to the downtown district, which has enjoyed significant economic activity and growth over the past 15-20 years. Should the effort prove successful, Council may wish to add other zoning districts in the future, but at the outset, the Department believes an incremental approach prudent. (Planning and Development Department Exhibit “A” highlights the zoning districts impacted.)

In BC (General Business)

Add to Section 32-19(b)(19)

19. Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4 (g). Manufacturing and sales shall not exceed more than 10,000 barrels for microbreweries and 250,000 proof gallons for craft distilleries during a calendar year.

In MI (General Industrial)

Add to Section 32-21(b)(2)

2. Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4(g).

In MOR (Manufacturing Office Research)

Add to Section 32-23(b)(3)

3. Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4 (g).

3. Determine appropriate restrictions and/or conditions for operations and apply them to the Special Use Permit criteria:

Create Special Use Permit Requirements

In order to properly regulate microbreweries and craft distilleries and their associated accessory uses, while maintaining current alcohol regulations for restaurants and indoor movie theaters, the Planning and Development Department suggests that Section 32-56.4 under Article XVI: General Provisions, be amended as follows:

1. Add microbreweries and craft distilleries to the uses requiring a special use permit to sell alcoholic beverages in Section 32-56.4 (f);
2. Add a new section 32-56.4 (g) which is specific to microbreweries and craft distilleries and their accessory uses; and

3. Make amendments to the overall Section 32-56.4 (subsections a through e) to reflect the restaurant requirements, for which the section was originally intended, but which currently refers to all “facilities” selling alcoholic beverages for consumption on premises. Specifically, when section 32-56.4 was first introduced, the only “facilities” permitted to sell alcoholic beverages for consumption on premises were restaurants. Now that we’ve added indoor theaters and are considering adding amendments for microbreweries and distilleries, clarifying which requirements correspond to which uses is necessary. It is important to note that, at this time, we are not proposing any changes to the specific conditions or restrictions on restaurants, which the Commission may wish to consider in the future. The goal is to make it clear for current Code which restrictions apply to which uses.

In order to avoid confusion, we will concentrate first on adding the uses to the section requiring a special use permit for alcohol sales – 32-56.4(f) – and then move to the creation of special use criteria specific to microbreweries and craft distilleries and their accessory uses, before tackling the housekeeping amendments necessary to address the clarity of Section 32-56.4 a through e.

To this end, we suggest adding microbrewery and craft distilleries to Section 32-56.4 (f) requiring a special use permit as follows: (Insertions shown in underline.)

(f) Special use permits for restaurants, microbreweries, craft distilleries, and indoor theaters selling alcoholic beverages for public consumption on the premises:

(1) Procedures: All facilities selling alcoholic beverages for public consumption on the premises, proposed after the adoption of this ordinance, that require council approved special use permits for such sales, shall be subject to the following:

(A) Special use permits as required herein shall be reviewed as provided in Article XX, Section 32-78, of this chapter.

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant, microbreweries, craft distilleries, or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, Section 32-78, of this chapter.

(2) Review criteria: In reviewing whether the applicant has demonstrated compliance with the factors for granting a special use permit specified in Article XX, Section 32-78 of this chapter, city council shall consider a written report prepared by the planning director, at the direction of the city manager, which shall include the following:

(A) A police department evaluation concerning compliance with Chapter 19, Minors; Chapter 22, Police Offenses, Article XVII, Sales and Distribution of Alcoholic Beverages; and, Chapter 32, Zoning.

(B) A building department evaluation concerning compliance with Chapter 32, Zoning, and Chapter 7, Building.

(C) Any available information from the Delaware Alcoholic Beverage Control Commission; and,

(D) Other information as appropriate.
To create special use permit criteria for microbreweries and distilleries, add a new Section 32-56.4 (g), which is specific to microbreweries and craft distilleries as follows: (Insertions shown in underline.)

(g) Facilities licensed by the Delaware Alcoholic Beverage Control Commission as a microbrewery or craft distillery are subject to the following special requirements:

1. All aspects of the distilling or brewing process must be completely confined within a building, including the storage of all materials and finished products.

2. Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses, with impact, requiring a special use permit under Sections 32-78 and 32-56.4 (f) of this chapter. Tasting rooms or taprooms shall not operate as stand-alone bars or tasting/taproom. Tasting or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or taproom is permitted per primary use.

3. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.

4. All garbage and production waste must be stored in covered containers and not visible from public ways.

5. There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to hours of 4:00 p.m. to 9:00 p.m.

6. Areas for the sale, serving, and consumption of alcoholic beverages on premises may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.

7. Expanded open-air seating, adjacent and accessory to a microbreweries or craft distillery, where the alcoholic beverages produced onsite are served or consumed, are permitted with a special use permit under Sections 32-78 and 32-56.4 (f) of this chapter, with the following conditions:

   A. A description of the open air seating area location, layout and its operations shall be included in the application for the special use permit under 32-78(a)(1).

   B. No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors and Solicitors, of this Code.

   C. Any noise emanation from the open-air seating area shall not violate the regulations of the City of Newark Municipal Code or other regulations pertaining to noise. There shall be no amplified sound in the outdoor seating area. Noise from the beer garden shall not substantially or unreasonably interfere with the neighbor's enjoyment of their property.

   D. All hours of operation are limited to between the hours of 10:00 a.m. to 10:00 p.m.
(E) Tables, chairs, umbrellas, and any other objects provided with an open-air seating area shall be maintained in a clean and attractive appearance and shall be in good repair at all times. The area shall also be kept clean.

(F) No vending machines of any kind shall be permitted.

(G) No overflow of patrons on sidewalks and/or street right of way shall be permitted.

(H) A fence may be required by City Council in addition to any State requirement for enclosures. Fence requirements shall be established on a case by case basis as specified by City Council. Fence requirements shall be based on the location of the establishment, adjoining land use, lot and building size, and proximity to residential properties and streets.

(I) Open-air seating areas shall have a maximum capacity of one person for each 10 net square feet of the floor area of the beer garden. Capacity of the open-air seating area shall be posted in the open-air seating area.

(J) Open-air seating areas shall be subject to all other applicable requirements of this Code.

(K) Open area seating areas within 200 feet of land zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) are subject to the requirement of five affirmative votes of council for approval.

Discussion

The Department believes that the above criteria, in conjunction with the special use permit protocol managed by the Newark Police Department in the evaluation of special use permits for alcoholic beverage consumption on site will insure the production of alcohol and related accessory uses will not have a negative impact on the community.

4.) Determine the appropriate parking requirements and add them to the Code:

The Planning and Development Department suggests that the minimum off-street parking requirement be amended as follows:

In Article XIV: Off-Street Parking and Loading Requirements

Newark Zoning Code Section 32-45 to be amended as followed: (Insertion shown in underline.)

| Industrial, manufacturing, wholesaling establishment, microbrewery, or craft distillery. | One off-street parking space per two employees on the shift of greatest employment, plus one off-street parking space per 200 square feet of floor area devoted to on or off premises sales, serving, and consumption of alcoholic beverages on premises. |

Discussion

One of the concerns with the previous report was that it was not clear what constituted the “area devoted to sales” for the purposes of creating parking requirements. The Department clarified that areas including sales, serving, and consumption are calculated into the parking requirements.
5.) Make housekeeping amendments to Code to allow for the inclusion of the conditional uses created without impacting current Code mandates for other uses:

As previously noted, because when section 32-56.4 was first added to Code, the only facilities permitted to sell alcoholic beverages for consumption on premises were restaurants, and since that time we’ve added indoor theaters, and now propose changes to include microbreweries and craft distilleries. As a result, it is now necessary to clarify which rules apply to which establishments (restaurants, indoor theaters, microbreweries, or craft distilleries) as opposed to referring to them all as “facilities”. Therefore, in addition to amendments regulating microbreweries and craft distilleries as outlined above, edits to Section 32-56.4 are also recommended for clarification. Again, it is important to note, at this time, we are not proposing changes to Section 32-56.4 (a)-(e), just making it clear which rules apply to which uses. Planning Commission may wish to consider regulatory amendments to requirements for restaurants and for associated patios at a future time.

The Department proposes the following amendments. (Insertion shown in underline. Deleted words are marked through.):

Sec. 32-56.4. - Facilities selling alcoholic beverages for consumption on premises and restaurant patios.

(a) Facilities Restaurants selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory, or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements:

(1) Live night club or floor show type entertainment defined as electronically amplified musical, dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or nonelectronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section shall be provided with all permitted live entertainment;

(2) There shall be no carry-out liquor service;

(3) Reserved;

(4) There shall be no less than 50 seats in the facility; and

(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of adoption. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of its adoption.

(6) All existing facilities selling alcoholic beverages for consumption on the premises subject to a 12:00 midnight alcoholic beverage sales closing time as of (date of adoption of this ordinance), and all new such facilities located as specified in this subsection, shall be prohibited from selling alcoholic beverages on the premises after 12:00 midnight,
unless such facilities receive a special use permit authorizing sales after 12:00 midnight, subject to the procedural requirements in Section 32-56.4(f) herein.

(b) Those facilities restaurants selling alcoholic beverages for consumption on the premises and located within the central portion of the city bounded by Chapel Street on the east, Delaware Avenue on the south, Elkton and New London Roads on the west, and the University of Delaware’s North Campus property and the White Clay Creek on the north, if the property line of any such facility is adjacent to the property line of a church, library, school, nursing home, hospital, and dormitory, shall require a special use permit, as provided in Article XX, Section 32-78 subject to the requirement of five affirmative votes of council for approval, and subject to all other requirements herein.

(c) Facilities Restaurants licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant shall provide full restaurant service, with lunch, dinner, and dessert menus, which shall be defined as serving complete meals for consideration during all hours of operation; except that limited late service may be substituted for full restaurant service beginning 90 minutes before the time that alcoholic beverages are no longer served. The limited service of such food as sandwiches, salads, pizza, and similar items normally provided by taverns, luncheonettes, coffee shops, or snack bars shall not be deemed to be full restaurant service, but shall be deemed to be limited late service as permitted by this section. The service of alcoholic beverages shall be clearly incidental and complimentary to full and limited restaurant service. No age-based cover or similar surcharge for patrons shall be permitted in such facilities. This subsection regarding cover charges to take effect within 180 days of its adoption. There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to the hours of 4 PM to 9 PM. This subsection to take effect within 90 days of its adoption, and shall apply to all existing and new establishments licensed to sell alcoholic beverages for public consumption on the premises.

(d) Restaurant patios and sidewalk cafes. Restaurant patios and sidewalk cafes defined as decks, porches, or similar structures, whether covered or uncovered, raised or at grade, or the placing or locating of chairs and tables directly on sidewalks, used in connection with restaurants, bakery restaurants, and/or tavern tasting/taprooms shall be subject to the following special requirements:

1. Total size shall not exceed 1,000 square feet.
2. Food and beverages shall be served only to seated patrons.
3. No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors, and Solicitors, of this Code.
4. No electronically amplified sound shall be permitted.
5. No overflow of patrons on sidewalks and/or street right-of-way shall be permitted.
6. A minimum five-foot wide clear pedestrian path between any obstruction and the restaurant patio/sidewalk cafe shall be maintained at all times, but in no case shall the restaurant patio sidewalk cafe encroach into the public right-of-way. Upon application to the public works director, however, and in conjunction with review by the planning director, an intrusion into the five-foot wide clear pedestrian path may be permitted for periodic or special promotional events or related activities.
(7) Tables, chairs, umbrellas, and any other objects provided in connection with a facility located directly on sidewalks shall be secured in an orderly fashion or removed from the sidewalk area when dining facility is closed to the public.

(8) No tables and chairs nor any other parts of restaurant patios or sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other public fixtures.

(9) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained in a clean and attractive appearance and shall be in good repair at all times.

(10) No vending machines of any kind shall be permitted.

(11) For facilities directly on sidewalks, such facilities shall be swept and washed daily by restaurant operator including the adjoining sidewalks to the street curb. Raised decks, porches, and similar structures shall also be swept daily. Debris shall be disposed of properly in owner/manager’s containers.

(12) Restaurant patios and sidewalk cafes shall be subject to all other applicable requirements of this code.

(e) Bar facilities in restaurants, defined as any counter in which alcoholic beverages may be stored, displayed, prepared and served, and at which patrons sit and/or stand and consume alcoholic beverages, shall be permitted, except as otherwise regulated herein, and shall be limited in size in terms of seats to no more than 15% of the total number of seats in the restaurant, not including outdoor seating at restaurant patios and sidewalk cafes.

STAFF COMMENTS

Staff comments were presented in the Planning and Development Report dated October 24, 2016. See Attached B.

RECOMMENDATION

Because there is potential for a positive economic impact by permitting the production of alcohol with associated accessory uses as conditional uses in specific zoning districts in the City of Newark, and in order to enable the City to adequately regulate microbreweries and craft distilleries with a Council granted special use permit, the Planning and Development Department suggests the Planning Commission consider recommending to City Council the following changes to the Zoning Code:

In Article II. Definitions

Add to Section 32-4(a)

(34.1) Distillery, craft: A single establishment in which spirits are manufactured, and is operated by the licensee in accordance with State Law.

(76.1) Microbrewery: A single establishment in which beer, mead and/or cider are manufactured, and is operated by the licensee in accordance with State Law.

(82.3) Open-air seating area: An accessory use with impact to a microbrewery or craft distillery which is an open air, roofed or unroofed area where the alcoholic beverages produced onsite are served or consumed and is operated by the licensee in accordance with State law.
(127.2) **Taproom**: An accessory use, with impact, to a microbrewery or craft distillery as a place for the sale by the glass and for consumption on the premises of alcoholic liquors produced onsite, with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

(127.3) **Tasting room**: An accessory use, with impact, to a microbrewery or craft distillery establishment as a place for the consumption of spirits and beer produced onsite for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine, and beer sample is not to exceed 1 ounce for wine and beer and ½ ounces for spirits.

In **BC (General Business)**

Add to Section 32-19(b)(19)

(19) **Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4(g).** Manufacturing and sales shall not exceed more than 10,000 barrels for microbreweries and 250,000 proof gallons for craft distilleries during a calendar year.

In **MI (General Industrial)**

Add to Section 32-21(b)(2)

(2) **Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4(g).**

In **MOR (Manufacturing Office Research)**

Add to Section 32-23(b)(3)

(3) **Microbrewery and craft distillery subject to the requirements of Sections 32-56.4(f) and 32-56.4(g).**

In **Article XIV: Off-Street Parking and Loading Requirements**

Newark Zoning Code Section 32-45 to be amended as followed: (Insertion shown in underline.)

| Industrial, manufacturing, wholesaling establishment, microbrewery, or craft distillery. | One off-street parking space per two employees on the shift of greatest employment, plus one off-street parking space per 200 square feet of floor area devoted to on or off premises sales, serving, and consumption of alcoholic beverages on premises. |

In **Article XVI: General Provisions**

In Section 32-56.4 to be amended as follows: (Insertion shown in underline. Deleted words are marked through.)

Sec. 32-56.4. - Facilities selling alcoholic beverages for consumption on premises and restaurant patios.

(a) **Facilities Restaurants** selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory, or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements:
(1) Live night club or floor show type entertainment defined as electronically amplified musical, dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or nonelectronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section shall be provided with all permitted live entertainment;

(2) There shall be no carry-out liquor service;

(3) Reserved;

(4) There shall be no less than 50 seats in the facility; and

(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of adoption. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of its adoption.

(6) All existing facilities selling alcoholic beverages for consumption on the premises subject to a 12:00 midnight alcoholic beverage sales closing time as of (date of adoption of this ordinance), and all new such facilities located as specified in this subsection, shall be prohibited from selling alcoholic beverages on the premises after 12:00 midnight, unless such facilities receive a special use permit authorizing sales after 12:00 midnight, subject to the procedural requirements in Section 32-56.4(f) herein.

(b) Those facilities restaurants selling alcoholic beverages for consumption on the premises and located within the central portion of the city bounded by Chapel Street on the east, Delaware Avenue on the south, Elkton and New London Roads on the west, and the University of Delaware’s North Campus property and the White Clay Creek on the north, if the property line of any such facility is adjacent to the property line of a church, library, school, nursing home, hospital, and dormitory, shall require a special use permit, as provided in Article XX, Section 32-78 subject to the requirement of five affirmative votes of council for approval, and subject to all other requirements herein.

(c) Facilities Restaurants licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant shall provide full restaurant service, with lunch, dinner, and dessert menus, which shall be defined as serving complete meals for consideration during all hours of operation; except that limited late service may be substituted for full restaurant service beginning 90 minutes before the time that alcoholic beverages are no longer served. The limited service of such food as sandwiches, salads, pizza, and similar items normally provided by taverns, luncheonettes, coffee shops, or snack bars shall not be deemed to be full restaurant service, but shall be deemed to be limited late service as permitted by this section. The service of alcoholic beverages shall be clearly incidental and complimentary to full and limited restaurant service. No age-based cover or similar surcharge for patrons shall be permitted in such facilities. This subsection regarding cover charges to take effect within 180 days of its adoption. There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to the hours of 4 PM to 9 PM. This subsection to take effect within 90 days of its
adoption, and shall apply to all existing and new establishments licensed to sell alcoholic beverages for public consumption on the premises.

(d) Restaurant patios and sidewalk cafes. Restaurant patios and sidewalk cafes defined as decks, porches, or similar structures, whether covered or uncovered, raised or at grade, or the placing or locating of chairs and tables directly on sidewalks, used in connection with restaurants, bakery restaurants, and/or tavern tasting/taprooms shall be subject to the following special requirements:

1. Total size shall not exceed 1,000 square feet.
2. Food and beverages shall be served only to seated patrons.
3. No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors, and Solicitors, of this Code.
4. No electronically amplified sound shall be permitted.
5. No overflow of patrons on sidewalks and/or street right-of-way shall be permitted.
6. A minimum five-foot wide clear pedestrian path between any obstruction and the restaurant patio/sidewalk cafe shall be maintained at all times, but in no case shall the restaurant patio sidewalk cafe encroach into the public right-of-way. Upon application to the public works director, however, and in conjunction with review by the planning director, an intrusion into the five-foot wide clear pedestrian path may be permitted for periodic or special promotional events or related activities.
7. Tables, chairs, umbrellas, and any other objects provided in connection with a facility located directly on sidewalks shall be secured in an orderly fashion or removed from the sidewalk area when dining facility is closed to the public.
8. No tables and chairs nor any other parts of restaurant patios or sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other public fixtures.
9. Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained in a clean and attractive appearance and shall be in good repair at all times.
10. No vending machines of any kind shall be permitted.
11. For facilities directly on sidewalks, such facilities shall be swept and washed daily by restaurant operator including the adjoining sidewalks to the street curb. Raised decks, porches, and similar structures shall also be swept daily. Debris shall be disposed of properly in owner/manager’s containers.
12. Restaurant patios and sidewalk cafes shall be subject to all other applicable requirements of this code.

(e) Bar facilities in restaurants, defined as any counter in which alcoholic beverages may be stored, displayed, prepared and served, and at which patrons sit and/or stand and consume alcoholic beverages, shall be permitted, except as otherwise regulated herein, and shall be limited in size in terms of seats to no more than 15% of the total number of seats in the restaurant, not including outdoor seating at restaurant patios and sidewalk cafes.
Special use permits for restaurants, microbreweries, craft distilleries, and indoor theaters selling alcoholic beverages for public consumption on the premises:

1. Procedures: All facilities selling alcoholic beverages for public consumption on the premises, proposed after the adoption of this ordinance, that require council approved special use permits for such sales, shall be subject to the following:

   (A) Special use permits as required herein shall be reviewed as provided in Article XX, Section 32-78, of this chapter.

   (B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant, microbreweries, craft distilleries, or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, Section 32-78, of this chapter.

2. Review criteria: In reviewing whether the applicant has demonstrated compliance with the factors for granting a special use permit specified in Article XX, Section 32-78 of this chapter, city council shall consider a written report prepared by the planning director, at the direction of the city manager, which shall include the following:

   (A) A police department evaluation concerning compliance with Chapter 19, Minors; Chapter 22, Police Offenses, Article XVII, Sales and Distribution of Alcoholic Beverages; and, Chapter 32, Zoning.

   (B) A building department evaluation concerning compliance with Chapter 32, Zoning, and Chapter 7, Building.

   (C) Any available information from the Delaware Alcoholic Beverage Control Commission; and,

   (D) Other information as appropriate.

Add a new Section 32-56.4 (g), which is specific to microbreweries and craft distilleries as follows:

(g) Facilities licensed by the Delaware Alcoholic Beverage Control Commission as a microbrewery or craft distillery are subject to the following special requirements:

1. All aspects of the distilling or brewing process must be completely confined within a building, including the storage of all materials and finished products.

2. Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses, with impact, requiring a special use permit under Sections 32-78 and 32-56.4 (f) of this chapter. Tasting rooms or taprooms shall not operate as stand-alone bars or tasting/taproom. Tasting or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or taproom is permitted per primary use.

3. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.

4. All garbage and production waste must be stored in covered containers and not visible from public ways.
(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to hours of 4:00 p.m. to 9:00 p.m.

(6) Areas for the sale, serving, and consumption of alcoholic beverages on premises may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.

(7) Expanded open-air seating, adjacent and accessory to a microbreweries or craft distillery, where the alcoholic beverages produced onsite are served or consumed, are permitted with a special use permit under Sections 32-78 and 32-56.4 (f) of this chapter, with the following conditions:

(A) A description of the open air seating area location, layout and its operations shall be included in the application for the special use permit under 32-78(a)(1)

(B) No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors and Solicitors, of this Code.

(C) Any noise emanation from the open-air seating area shall not violate the regulations of the City of Newark Municipal Code or other regulations pertaining to noise. There shall be no amplified sound in the outdoor seating area. Noise from the beer garden shall not substantially or unreasonably interfere with the neighbor’s enjoyment of their property.

(D) All hours of operation are limited to between the hours of 10:00 a.m. to 10:00 p.m.

(E) Tables, chairs, umbrellas, and any other objects provided with an open-air seating area shall be maintained in a clean and attractive appearance and shall be in good repair at all times. The area shall also be kept clean.

(F) No vending machines of any kind shall be permitted.

(G) No overflow of patrons on sidewalks and/or street right of way shall be permitted.

(H) A fence may be required by City Council in addition to any State requirement for enclosures. Fence requirements shall be established on a case by case basis as specified by City Council. Fence requirements shall be based on the location of the establishment, adjoining land use, lot and building size, and proximity to residential properties and streets.

(I) Open-air seating areas shall have a maximum capacity of one person for each (10) net square feet of the floor area of the beer garden. Capacity of the open-air seating area shall be posted in the open-air seating area.

(J) Open-air seating areas shall be subject to all other applicable requirements of this Code

(K) Open area seating areas within 200 feet of land zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) are subject to the requirement of five affirmative votes of council for approval.
Mr. Firestone: Thank you. I’d now like to hear public comment, and we have one person who signed up for this: Kent Steeves from Nottingham Green. And if you could officially introduce yourself.

Mr. Kent Steeves: Yes. Hi, I’m Kent Steeves. I live in Nottingham Green which I always forget but I’m pretty sure it’s District 1. I am here in interest with one of my business partners over here with me, Kathy Drysdale. We actually have been approaching the City about wanting to open a micro-brewery within the City limits. We did provide, at City Council, a lot of the background on why we were coming to the City for bringing this in. I’ll try to do a highlight summary of that.

First, relative to trends going on in the, let’s say just in the United States, we now have over 5,000 micro-breweries in the country. That still is far underneath the amount of wineries we have in the country, which I think the number is around 6,500, just to give you some perspective. These micro-breweries also include brew pubs like an Iron Hill Brewery, which you’re quite familiar with here in the City. So there’s a mix of a brew pub, which is a restaurant that makes their own beer, as well as micro-breweries that are brewing beer, having a taproom and an open air space available for community gathering, community socializing and enjoying the craft beverage that is manufactured at that site.

There is a lot of economic data available for the economic growth that micro-breweries are bringing to the communities that they’re in. It’s bringing interest back and revitalizing many communities, especially on the east coast of the United States, and it’s also bringing good, strong economic development in areas that just haven’t seen business and employment development.

I do have express interest because we want to open a micro-brewery, so I’m biased, but I’m also a Newark resident and I’ve been a Newark resident since 1985, and I don’t like seeing all the other communities around the country doing things to try and help develop more social related activities and we’re not also picking up on that. So it’s just an expressed interest as a resident for you.

I can try to answer a lot of questions for you, so I’ll be here is they come up. I know a lot about brewing. I am a brewer already and I’ll try to answer anything specific that comes up. But just bringing it up so you know what the interests are, there are two other parties that have come forward. They’re very similar business model to ours. Ours might be a little bit more inclusive to what they are looking at.

And then, I have reviewed, as has my partner, the revisions to the Code and, actually, it looks like, from our perspective, we really appreciate the work that you’ve put into it, and I think it’s actually been done very well from trying to run a business. We could easily partner with the City to work within the confines of what’s put into the current update to the Zoning Code. And actually, then, as a City resident, I think it has tried to put into place, what are we trying to do in the City and not get into an alcohol challenge. So it’s focused in zoning districts that are not on Main Street. They are actually peripheral to the City. They’re not easily accessible to students, which I think is a worry that we all have. We don’t want to try to create difficulties with alcohol relations and the student body that we have here in the City. It’s done a nice job of trying to balance the interests of the City, as well as the interests of business. And so I applaud the work that the Planning Department has done. And so I do wish and hope, not only for the interests of us trying to open a business in Newark, but also as a City resident, that you give strong consideration to accepting these amendments. And we will be here available for comment. I don’t know the formalities of how we can offer answering the questions, but we’re happy to do so. Thank you.

Mr. Firestone: Thank you. Is there anyone else from the public who would like to comment on this? Please step forward, Mrs. White.
Ms. Jean White: Okay, Jean White, District 1. At the November Planning Commission meeting, I expressed my opinion on this and my views on it have not changed. I won’t go into the details of what I said then because you heard them and you have them in the minutes. I just want to say that I don’t support expanding the sale of alcohol in the forms that are before you in Newark. My concerns are that Newark already has a lot of different areas of getting alcohol, having alcohol, and I do not like the idea of our town being known in particular or emphasis on the alcohol part of it. Not only student use but whatever some of us makes it, an additional advertisement for this type of thing. So now I have a couple of questions.

In the tasting rooms and the taprooms in micro-brewery and the craft brewery, I wondered if only those 21 or over are allowed in, and in particular children, but only 21 and over? So you could answer that for me. To come to the tasting room.

Mr. Firestone: This is just an opportunity for comment.

Ms. White: Okay. Can you address it after I’m finished then?

Mr. Firestone: We’ll . . .

Ms. White: Okay, after I’m finished you can do it. So that’s question 1. And let me just see here . . . a little while back the only entity that had a taproom license was the Stone Balloon, the old Stone Balloon. When the building was torn down, the owner wanted very much to keep that, which I think he was able to keep it. And then we have now the Stone Balloon Winehouse. But does that still have the taproom license?

Ms. Feeney Roser: No, because no one under 21 could enter and they wouldn’t be able to be open on Sundays, so they gave the tavern license up.

Ms. White: Okay. I wasn’t really sure about that. Okay. And if there is an application for a micro-brewery, craft brewery or beer garden, which is now called the open air area, will the City send out a notice to those within 300 feet so that those within 300 feet, which might possibly be residential, I don’t know, will have the option to know about it if they wanted to speak against it or for it, for that matter?

Ms. Feeney Roser: May I answer that?

Mr. Firestone: Yes.

Ms. Feeney Roser: We’re requiring special use permits, so we will follow the notifications for that. I’m not sure if it’s 200 or 300 feet, but they will get notified before Council decision.

Ms. White: Okay, but I think, and correct me if I’m wrong, I think the special use permit for a restaurant, just a regular restaurant that’s getting an alcohol permit, I did not think that the City sent out notices within 300 feet.

Ms. Feeney Roser: We send out notices for special use permits.

Ms. White: You do?

Ms. Feeney Roser: Yes, we do for all special use permits.

Ms. White: Okay, then I stand corrected. And then, in addition, because for these, as well as restaurants getting an alcohol permit for the first time, the Delaware Alcohol Beverage Commission has to put an ad in the paper and then those who see that, if they wish to protest, if at least 10 people do it, they’d have to have a hearing. But that hearing is in Wilmington, not here. Okay, well that answers about the notices. Thank you.
And let me just see here . . . I’m not sure what types of places the micro-brewery or the craft brewery or the tasting room would occupy, whether they would build the building themselves or occupy a building that’s already there. But let’s say if it’s in MI or MOR, if it might be a warehouse type thing. So I’m just thinking, of course, about the California situation which was not, it didn’t have an alcohol situation at all, but I was wondering if they would have to sprinkle the building for fire safety if it was already a building that was grandfathered? Or wasn’t grandfathered, it existed.

Ms. Feeney Roser: If it’s a change of use, it has to be sprinklered.

Ms. White: Change of use, okay. Thank you.

Mr. Firestone: Is there any other public comment? Okay, I will now open it up to the Commissioners.

Mr. Silverman: I applaud the work that’s been done on reworking the document. I was quite critical last time with respect to the logic of it and how it fell together. And this is a 100% improvement. It reads very clearly. It works through very nicely. I do have one question, and the gentleman who is a potential user of this category mentioned open air patio. Now I’m still confused. If I had a warehouse type building, completely enclosed, all year-round heated and air-conditioned, would this use occupy that kind of a building? Or is this a seasonal use where there’d be a structure on-site and then there would be, essentially, a large outdoor patio area that may not be occupied during very inclement weather?

Mr. Fortner: I would describe it as the latter. It’s an open air patio. Anything that’s enclosed would be part of the facility. This would be an open air area, similar to a patio that has a restaurant that we allow. Basically, the main difference is we allow a larger size if they applied for a special use permit for it.

Mr. Silverman: And this would still be an ancillary use to the primary brewery or distillery?

Mr. Fortner: That’s correct.

Mr. Silverman: Okay.

Mr. Firestone: I’ve got some technical questions and I also do want to commend you. I think this is a very much improved, simplified and easy to understand draft. I think we’re light years ahead of where we were last meeting. So on the definition of distillery craft, and these are all under definitions . . .

Mr. McIntosh: What page are you on?

Mr. Firestone: On page 2 . . . that it would include taprooms and tasting rooms, correct?

Mr. Fortner: Distillery craft, yes. I mean it is a match-up with the definition under State law. We essentially use the same language. And under the State law they don’t call it a taproom, they just allow for the tastings and sale of products.

Mr. Firestone: My question is, do we want to say after “in accordance with State law, including taprooms and tasting rooms”? And the same thing would be under micro-brewery. Just so we’re clear. I’m trying to make this as clear as possible so there’s not future discussion.

Mr. Silverman: The origin and jurisdiction.

Mr. Firestone: What?

Mr. Silverman: The origin and jurisdiction of the definition.
Mr. Firestone: Yes. So that our definition says “and it includes taprooms and tasting rooms” so that there’s no ambiguity there.

Ms. Feeney Roser: I understand what you’re saying but if you look at the sections where it’s allowed, it directs you directly to 32-56.4(g) which clearly says that they’re allowed as accessory to either. So the definitions are in Section 4, right? But when somebody comes in, we’re going to look at the Zoning section and it’s going to say as a conditional use you may do a brewery or a distillery, subject to the requirements of, I’m not going to say the numbers, but it’s (f) which means it needs a special use permit and (g) which are requirements specific to the distillery or the taproom. That’s the way our Code works.

Mr. Fortner: It’s an important distinction that State law doesn’t use taproom and micro-brewery. They just say you’re allowed to sell it.

Mr. Firestone: I understand. I’m just saying this is my recommendations to make it as clear as possible. That our definition includes taprooms and tasting rooms. You can choose to . . . ultimately we can decide what we want to do. I’m just telling you what I think would be as clear as possible.

Mr. Fortner: Okay.

Mr. Firestone: On the definition of taproom, further down the page, you use the term alcoholic liquors but I take it that that’s not a defined term, and it could be interpreted . . . I mean sometimes liquor is used in contradistinction to beer and wine. Sometimes it’s used to encompass beer and wine. And so we just ought to be clear.

Mr. Cronin: Perhaps to say beverages would be good. Alcoholic beverages.

Ms. Feeney Roser: Rather than . . .

Mr. Cronin: I saw the same thing you did.

Ms. Feeney Roser: That makes sense. Do you know where we are? We’re looking at the definition. It says premise of alcoholic liquors, and it could say alcoholic beverages.

Mr. Fortner: Alcoholic beverages? Okay. Maybe. I mean, I think the State has a definition of alcohol and it’s over 1% alcohol content, or something. I think they have some sort of thing. And maybe they use that term. I’m sure that came from State Code.

Ms. Feeney Roser: It may but I don’t think it matters if we use the term beverage if it makes sense, instead of liquors.

Mr. Fortner: Alcoholic beverages.

Ms. Feeney Roser: Because it does seem to leave out beer and wine.

Mr. Fortner: Okay.

Mr. Firestone: And then do we want to be even clearer that the taproom requires both the sale and consumption on premises?

Ms. Feeney Roser: It says sale by the glass and for consumption on the premises.

Mr. Firestone: Right, but it doesn’t necessarily mean that they both have to occur by the same person. I’m just trying to, again, make it so that people can’t go and say yeah I have sale and I allow consumption. But it didn’t mean that I can’t allow someone . . . that I can’t sell it and then have someone consume it off the premises. I’m just trying to link the two.
Mr. Cronin: Mr. Chair, I saw some of that too. And if you go to the top of the same page, the third line down at the top talks about the sale and consumption of alcohol on- and off-site. Well, to me, off-site is like carry-out for sale.

Ms. Feeney Roser: Right. Growlers.

Mr. Fortner: Yes.

Mr. Cronin: Okay, so I think it’s intended that as a business you’re trying to encourage sales, whether they consume it, try it and consume it on the premises, or they like it so well they’re going to buy some and take it home. That’s good for business.

Mr. Firestone: But this is sale by the glass. This is a single serving. And I’m just trying to make sure that we have a regulation that requires that if it’s a sale by the glass that it, in fact, be consumed on the premises.

Mr. Silverman: Mr. Chairman, I see where you’re going with this. Prohibition liquor laws are crazy. What I think you’re talking about is I’ve been in establishments in Delaware where it’s considered on and off. If I want a bottle of whiskey and there’s one behind the bar, I can walk up to the bartender and he can hand me a bottle of whiskey . . . the on and off sales, the carry-out . . . and I can buy a bottle of whiskey over the bar as opposed to having to go to a package store-like display and arrangement with a separate cash register and everything else. So I think where you’re going with this is you’re not going to have a bar that’s also going to sell by the bottle, by the sealed bottle. Is that where you’re going with this?

Mr. Firestone: No, I’m just saying that I want to be crystal clear that if there is a sale by glass, it is, in fact, consumed on the premises.

Ms. Feeney Roser: Okay. Can we then take out “and for consumption” and say “and consumed” on the premise? Does that do it?

Mr. Firestone: Sale by the glass and consumed. I think that’s good.

Mr. Silverman: Yes.

Mr. Firestone: That’s what I was trying to get at.

Ms. Feeney Roser: I got you.

Mr. Firestone: And then under the definition of tasting room, it says a place for the consumption of spirits and beer. Might there be some tasting rooms that there’s only consumption of spirits and some tasting rooms where there is only consumption of beer. And so it should say and/or beer.

Mr. Silverman: Agreed.

Mr. McIntosh: Or both.

Mr. Firestone: Yes, and/or.

Ms. Feeney Roser: Mixing and matching.

Mr. Firestone: And then on page 7, under paragraph 7, at the top you use expanded open-air seating and then all the way down on (I) you talk about open-air seating areas shall have a minimum capacity of floor area of the beer garden and that’s then a new term that we haven’t used before, and I think it should be of the open-air seating area.

Ms. Feeney Roser: We missed that beer garden, Mike.
Mr. Fortner: Yes, we knew we’d miss one.

Mr. Silverman: Good catch.

Mr. Firestone: And I think, okay that’s the last item I found.

Mr. Silverman: Mr. Chairman, in going back through my definitions, if we could go back to page 7, (G) no overflow of patrons. I think I understand what the intent is. We don’t want to have the party head out onto the sidewalk into the public right-of-way. I may be nitpicking but does that interfere with dropping off individuals and picking up individuals?

Ms. Feeney Roser: No.

Mr. Silverman: No. Okay. So if there were a police complaint about the overflow of patrons, and somebody says well hey that’s the soccer team bus and we’re loading up, that would be a permitted kind of thing?

Ms. Feeney Roser: Yes.

Mr. McIntosh: Unless it was a high school.

Mr. Silverman: Well then they would only sell soft drinks.

Ms. Feeney Roser: Root beer.

Mr. Firestone: Are there any other questions or comments?

Mr. Cronin: Mr. Chairman, yes, I have a few that I looked at here. Bob Cronin. Let’s see, I guess first is on page 4, we talk about, the top section, it says may stimulate economic growth in areas currently underutilized, particular shopping centers, which is, I think, admirable. But then when I look at the parking requirements later, the parking requirements tend to, I think, address separate tax parcels as opposed to a shopping center situation. And maybe the parking could reflect a different definition, such as the shopping center situation.

Ms. Feeney Roser: Shopping center is a different parking requirement.

Mr. Cronin: They are different. And on the same page, in the section below that, Section 32-19(b)(19), it says not to exceed 10,000 barrels for micro-breweries and 250,000 proof gallons for craft distilleries. Well, two things. First, I’m not sure what a proof gallon is. I know what a gallon is, but I’m not sure what a proof gallon is. And secondly, the State seems to allow, in the discussion on page 3 at the top, micro-breweries as much as 2 million barrels and then craft distilleries 750,000 gallons, both in a calendar year. So back to page 4, the 250,000 gallons is 1/3 of the State level, but 10,000 barrels, if my math is correct, is ½ of 1% of the State level. And 10,000 barrels seems kind of low and I was wondering if that was intended to be that low or . . .

Ms. Feeney Roser: It was definitely intended that those in BC would be smaller than those in the industrial areas. I think that we found, and Mr. Steeves or Ms. Drysdale could say, that 10,000 is actually a big micro-brewery based on what you would be proposing.

Mr. Steeves: A typical size.

Ms. Feeney Roser: A typical size would be 10,000? Because we know that Barley Oak . . . is that right, Tom Fruehstorfer . . . is like 4,000 or something.

Mr. Fruehstorfer: [inaudible]
Ms. Feeney Roser: We’re open to the Commission having a discussion about increasing or decreasing any of the quantities. I think we just thought we wanted to make sure if it was in a commercial area that might be near residential, that it were smaller than a huge industrial type brewery that might be better suited in MI or MOR.

Mr. Cronin: I guess part of my thinking was why did we go with a full 1/3 for the distillery in relation to the State maximum, and only ½ of 1% for the micro-brewery for the State maximum? It just seemed like a disparity.

Mr. Fortner: Well the caps were quite different. I mean 2 million and the State cap says 750,000. And so, you know, I think we calculated like 24, whatever those barrels numbers were, but it was equivalent. So, you know, doing 1/3 of 2 million didn’t really get us where we wanted to. We wanted it smaller than that. But it seemed like 250,000 gallons would be alright.

Ms. Feeney Roser: Is the point that 250,000 gallons of distilled liquor is too much? Is that your point?

Mr. Cronin: Not really, I don’t think. I mean, I think from an economic standpoint if somebody finds a location that’s permitted for what they want to do, they’re likely going to be leasing the space and they likely want their business to grow and be successful, and I think sometimes a cap can cap their success and their ability to grow, needlessly so. And we ought to be maybe a little less restrictive and permissive of business growth and success, as opposed to saying we’re getting up to our limits now, we can’t expand here so we have to close here and go someplace else. Or something like that.

Ms. Feeney Roser: Okay. Do you have a suggestion for us for what you’re talking about? Increasing the 10,000 for micro-breweries, right?

Mr. Cronin: Well, Kent Steeves said 10,000 seemed to be somewhat reasonable and I guess . . .

Ms. Feeney Roser: If you were to expand . . .

Mr. Cronin: I might say 20,000 then.

Mr. Steeves: May I address the Commission?

Mr. Firestone: Yes, you may.

Mr. Steeves: Thank you, Kent Steeves again. A 10,000 barrel brewery is, I will say, somewhat restrictive. But within the City limits, which is the intent of what you’re developing in this ordinance, it would fit a size of most buildings that we would go into right now envisioned in the City. If I were to pick a cap, I would have picked 25,000 barrels. The expansion of a micro-brewery doesn’t primarily come from the brew house itself. It comes from the vessels called fermentation vessels. And those are the big vertical cylinders with a conical bottom. And those are really what’s defining the capacities, how much fermentation capacity you have. And so you can go, you can add capacity from 10,000 . . . I haven’t done the math . . . but let’s say 15,000 without a significant amount of square footage space because you’ve already got the base capital. This is a capital intensive business and so reflecting to what the Commissioner is saying, it would cause us to have to think pretty hard about an expansion and the capital intensity of that. But I will say 10,000 is workable. But if I were to pick a number, based on what I know and not the exhaustive work that you all have done in the Planning Department, I would have picked 25,000. And I’m picking that based on some other cities around the east coast where they look at self-distribution laws versus requiring distributors and things like that. But I would say Mrs. Drysdale and I, we don’t look at the 10,000 barrel limit and say that’s overly restrictive, but that’s just what it would bring up is some capital decisions. And if you all know business, you know capital is a big deal in cash flow.
Mr. Fortner: Are you interested in opening in a commercial area or an industrial area?

Mr. Steeves: Our particular business model for our brewery does have an outdoor open-air space, or beer garden, and that’s a critical part of our business model. And for that reason, some industrial spaces are not an option just because of how those industrial spaces are laid out. There are other business models where it’s strictly the micro-brewery and indoor taproom, and they could work well inside an industrial space. Does that help?

Mr. Fortner: Yes, I was just curious because in an industrial area the cap is 2 million and so you wouldn’t have that 10,000 cap.

Mr. Steeves: Oh, I see.

Mr. Fortner: How we kind of said is a brew pub, they have a cap of 4,000, and so we thought that would be a lot of, if they were selling that much product on-site, we want it to be a commercial, kind of, front business, and distributing is another part of their business. Not necessarily a distributing business. And we thought if they sold 5,000 barrels on-site and then they distribute 5,000 barrels, and that would be about even, but after they got beyond that, it would be more of a distribution place rather than a commercial space. So we wanted to keep it small.

Mr. Steeves: And 4,000 barrels would be really restrictive. We would not . . .

Mr. Fortner: No, that’s for a brew pub.

Mr. Firestone: Thank you. Commissioner?

Mr. Cronin: So in light of that conversation, I think I would propose, instead of 10,000 barrels, 20,000.

Mr. Firestone: Okay. When we get to the motions, we can get that.

Mr. Cronin: Okay.

Mr. Firestone: Is there any further discussion?

Mr. Cronin: Yes, I’m still discussing.

Mr. McIntosh: Can we stay on that topic for a few minutes?

Mr. Cronin: That’s fine with me, sure.

Mr. McIntosh: Before you move off to another area. I would support increasing that. I don’t think it means that individuals going there are going to drink more. That would mean to me that more people would be going there and drinking whatever they want to drink. I have no concept of how many gallons . . . I don’t think I would personally consume 10,000 gallons in a year. But the point is that I think we should have . . . and I don’t think any of us understands this gallon business . . . so I think that it shouldn’t be unlimited but it probably should allow for room for growth as we go forward. And I don’t know if 20,000 is the number, or 25,000, or 50,000, or 12,000. I don’t know what that number is. But it seems like if you’re saying 10,000 would be adequate, adequate, if I’m putting a business plan together, I wouldn’t be planning on adequate. I would be planning so that I would have growth or something that would take me to another level. If you get adequate, you probably do adequate the first year or two and then you’re done. Well I would hope. It doesn’t matter whether it’s a pub or any other place. You wouldn’t build a business plan around adequacy. That’s all I wanted to say.

Mr. Firestone: Go ahead.
Mr. Cronin: Thank you. On page 7, we talk about 7(C), no amplified sound. I don’t know what the definition of amplified might be. I mean piped in music, background music. Something to shed a little bit of melody. I mean, to me, that’s amplified. It’s a radio speaker or something. What do you mean, an amplification, I’m sure you mean some certain decibel level that’s going to be loud and carry off-premises, I would think.

Ms. Feeney Roser: That actually comes from the other ordinance. According to restaurants outside, the City does not permit amplified muzak, or whatever, outside.

Mr. Cronin: Nothing at all? No level of speakers?

Ms. Feeney Roser: Right.

Mr. Firestone: And I just noticed in that section there is another use of the term beer garden.

Ms. Feeney Roser: My goodness, another beer garden. We’ll get that.

Mr. Firestone: Which needs to be changed.

Ms. Feeney Roser: They would be allowed to have acoustic sing-alongs and things of that sort there. But, I mean, if the Commission . . . this is really, if you make your recommendation and you don’t feel that that’s an important or a good point, then that would be fine, but there is other Code that would stop them from doing it anyway.

Mr. Cronin: I know it parallels Code elsewhere but is it what we want to do as far as, nothing, no amplification at all. No guitar player or a little background music. You know, nothing piped in with holiday Christmas carols or something seasonal that’s pretty low volume but creates some ambiance that could be enjoyed by people that are there. It just seems to me that it might not be hitting the nail on the head that we want to say none of that, absolutely zero, versus something that could be desirable.

Ms. Feeney Roser: Does the rest of that section, is that fine with you? So if the Commission wanted to strike that, that would be within your . . .

Mr. Cronin: Yes, I think the last sentence, shall not substantially or unreasonable interfere with the neighbor’s enjoyment of the property, is all you have to say. Really.

Mr. Firestone: You may want to allow a vocal mike even if you don’t allow the music to be amplified. You might want to have a vocal mike.

Mr. McIntosh: What did they do in Wilmington? At the Riverfront, they did wind up approving that beer garden there. Sorry to use that term but I think that’s what they called it. They did wind up approving that and one of the big issues, at least that I caught, was the noise that it might generate for residents in the area. How did they resolve that? Do we know?

Ms. Feeney Roser: My understanding is they did it by time limit but Mike did more research.

Mr. Fortner: They’re under a classification of open party or event. There’s an event that had an extended event license and they just recently renewed it for two years. But the first time it was made for a month and then they said okay we’ll do the whole summer. And now they’ve renewed it for two years. So they just sort of opened it up to see how it went, and decided it’s going very well. But it’s actually classified as an event, like Newark Day or Taste of Newark, where you would get an event license or any kind of thing like that. It’s basically an extension of that.

Mr. McIntosh: I wouldn’t have any objection to some music being played but I wouldn’t want to see big speakers like you see at football stadiums.
Mr. Cronin: Okay, and at the bottom of page 7, under Item I, the term ten net square feet. I’m not sure what net means for net square feet. Do we have an idea of what that means?

Ms. Feeney Roser: I think we could probably remove the word net.

Mr. Fortner: Sure.

Mr. Cronin: Okay, thank you.

Mr. Silverman: Mr. Chairman, if I may. If that was used in a Fire Code, the net square feet would be areas that people could move around on, unencumbered by benches, tables, chairs, that kind of thing.

Ms. Feeney Roser: I don’t think that’s our point here though. I think we just picked it up from some place and stuck it in there. It happens.

Mr. Silverman: I don’t see it as being critical. The fire marshal will regulate that.

Ms. Feeney Roser: Okay. Thank you.

Mr. Cronin: And the only other comment is on page 8. On the top, under Discussion, it says the above criteria, in conjunction with the special use permit protocol managed by the Newark Police Department in the evaluation of special use permits for alcoholic beverage consumption. . . . can you elaborate on that a little as to what that is, please?

Ms. Feeney Roser: Yes. In order to sell alcoholic beverage for consumption on premise, we have a special use permit. That special use permit can be revoked by City Council, and in the Code it says as recommended by a Councilman or the City Manager kind of thing, Council can consider it. Until very recently, there was no criteria for how they would evaluate that. So the Police Department has set up an administrative program for everyone who has a special use permit so that they have a points system that they’ve developed. So you get your first complaint, you may get a point. And once you get to a certain number of points, you get called in for an on-site discussion with a member of the Planning and Development Department and the Police Department. There’s a protocol they go through in order to then come to Council and recommend revocation so that everyone is treated equally is the point.

Mr. Cronin: Thank you. I remember hearing about that but I had forgotten that was the basis or the gist of it. Thank you. That’s all, Mr. Chairman.

Mr. Firestone: The Chair would entertain a motion at this time.

Ms. Feeney Roser: Do you want me to go through what I think you want so you don’t have to make a motion that has all those requirements in there, the changes? Would you like me to do that?

Mr. Firestone: Yes, it would be good to clarify to make sure that we’re agreed on all the changes.

Ms. Feeney Roser: Yes, in case I missed something. So I want to make sure that I have it. The one that I did not actually write down was including taprooms and tastings rooms to the definition. I mean I guess that will require more discussion for the Commission. So we’ll come back to that.

But for taproom, in the definition we’re taking out the words, in the first sentence, second line, for consumption and replacing it with the term consumed.
Under tasting rooms, on page 2, bottom of the page, it’s going to say and/or beer, instead of and beer.

Mr. Firestone: And while we’re under taproom, we’re going to change alcoholic liquors to alcoholic beverages.

Ms. Feeney Roser: Oh, I’m sorry, to beverages. Yes. That’s in there as well. Let’s see, I don’t have anything until we get to how many barrels you would recommend for micro-breweries. We had a suggestion of 20,000. Mr. Steeves had mentioned 25,000. So we’ll need to determine that.

Mr. Silverman: Maureen, your page number, please?

Ms. Feeney Roser: The page number is 4. I’m sorry. Then we get to page 7 and on 7(C) we have a discussion for the removal of the sentence that says there shall be no amplified sound in the outdoor seating area. We can take that out with the consensus of the Commission.

Everywhere where it says beer garden, and there are two on that page, we’re going to refer to open-air seating area, and the removal of the word net in (I).

One of the things we need to discuss then are the area requirements, I mean the parking requirements and how the shopping center parking requirements might apply to a micro-brewery in a shopping center. That could take some discussion. Right now a shopping center, if you go in, it’s one space per 4,000 square feet of . . .

Mr. Fortner: Its 4 spaces for 1,000 square feet.

Ms. Feeney Roser: I had that the other way around. Right. So would we suggest an amendment to this that would then apply because the two would be in conflict with each other?

Mr. Fortner: I was thinking just like having a use, if it’s a single use we apply that language, but when it’s part of a shopping center, the shopping center definition prevails.

Ms. Feeney Roser: That’s what we do for restaurants.

Mr. Fortner: Restaurants, anything, all has their own thing, so it would just be lumped in with that.

Mr. Silverman: Mr. Chairman, I would recommend that we go along with the shopping center standard for several reasons. One is there’s that common square footage and every time a use changes within a shopping center, we don’t force the shopping center owner to recalculate the number of parking spaces. It’s impractical. Secondly, this particular use, I would submit, would be more of an off-time use with respect to other commercial operations in a shopping center.

Ms. Feeney Roser: So your point is if a micro-brewery or a distillery were to be in a shopping center, the shopping center parking regulations would apply?

Mr. Silverman: It would be more than adequate. In other words, under the doctrine of shared parking. For example, in the Newark Shopping Center, the movie theater is active when some of the other commercial uses are not. For example, the bank. Therefore, one parking space can be used for two uses. That kind of thing.

Ms. Feeney Roser: Right. So I guess my question is for Bruce. Bruce, because we have an administrative standard and have used the shopping center requirement previously for parking for businesses in shopping centers, should we add a sentence here to 32-45 that says if a micro-
brewery or craft distillery is located in a shopping center, the shopping center parking requirements apply? Or because we usually do that administratively, is that enough?

Mr. Herron: I think it would be good to add the sentence that you came up with there.

Ms. Feeney Roser: So if the micro-brewery or craft distillery is located within a shopping center, the shopping center parking requirements shall apply. Is that adequate for us to say that?

Mr. Cronin: I think so.

Ms. Feeney Roser: Okay, so we’ll add that. And I think that was it as far as edits and suggestions that the Commission had. So we’re back to the two: shall we add taproom and tasting room to the definitions and what is the barrel count that you want to go with?

Mr. Cronin: Again, I’ll suggest the 20,000 barrel count.

Mr. Firestone: I’ll entertain a motion that sets forward as the document is with any modifications, including the 20,000 and, if you want, the including language. Are you moving that we accept the document as changed with the one additional change that it be 20,000 rather than 10,000 barrels?

Mr. Cronin: One more thing, Mr. Chairman. One thing from the earlier comment, on page 9, toward the top of the section 35-56.4, we start out with (a) restaurants. Do we need to make reference somewhere in this section to the indoor theaters also?

Ms. Feeney Roser: No. This section, where we have changed from facilities to restaurants, it’s because that part of the Code only applies to restaurants.

Mr. Cronin: Okay.

Ms. Feeney Roser: Indoor theaters are also regulated in there and they’re already in it. Are they not, Michael?

Mr. Fortner: That’s correct. It has its own section.

Mr. Cronin: I didn’t see it here so that’s why I asked the question. But you guys know the structure of the Code better than I do so I’m relying here on your expertise.

Ms. Feeney Roser: Thank you.

Mr. Silverman: Mr. Chairman, I move that we accept the report from the Planning and Development Department dated November 29, 2016, with respect to review and consideration of amendments to Chapter 32 Zoning Code of the City of Newark, alcohol production, sales and accessory uses, with the amendments and changes reflected in the Director’s summary.

Mr. Firestone: Is there a second?

Mr. Cronin: I’ll second but one more comment. We didn’t talk, again, about, in your summary, the proof gallons, 250,000 proof gallons.

Mr. Firestone: It is a term of art, so an 80 proof liquor would be 0.8 proof gallons.

Mr. Cronin: Got it. Thank you.

Mr. Firestone: You’re welcome.

Mr. Cronin: I’m so informed. That’s correct.
Mr. Firestone: Do we have a second?

Mr. McIntosh: Second.

Mr. Firestone: And just for clarification sake, the motion is based on the 10,000 gallon limit.

Mr. Silverman: 10,000 or 20,000?

Mr. Firestone: You made the motion. The way I understood it, it was based on the 10,000 gallon limit.

Ms. Feeney Roser: It was, because the Commission hasn’t discussed that yet. So you can either amend or . . .

Mr. Silverman: I want to include the larger number we talked about. How do we craft that into the motion?

Mr. Firestone: The motion is as the Director described with one modification, that modification being . . .

Mr. Silverman: Okay the modification being the . . .

Ms. Feeney Roser: 20,000 barrels.

Mr. Silverman: Changing the limit from 10,000 barrels to 20,000 barrels.

Mr. Firestone: Is there a second?

Mr. McIntosh: Second.

Mr. Firestone: Is there any discussion on the motion?

Mr. Cronin: Just for the record, Mr. Chairman, I learned this morning that 83 years ago today, prohibition ended in the United States.

Ms. Feeney Roser: Really? Today?

Mr. Cronin: Yes.

Mr. McIntosh: We should celebrate that.

Ms. Feeney Roser: See that, we are celebrating it, Frank.

Mr. Cronin: I thought that was an appropriate point of information.

Mr. Firestone: Is there any other discussion on the motion? In that case, all those in favor of the motion, signify by saying Aye. Opposed? Motion carries.

Ms. Feeney Roser: Thank you very much. Tom is next.

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

THAT CITY COUNCIL AMEND CHAPTER 32, ZONING CODE TO PERMIT ALCOHOL PRODUCTION, SALES AND ACCESSORY USES AS DETAILED IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT DATED NOVEMBER 29, 2016 AND REVISED BY THE COMMISSION AT THE DECEMBER 6, 2016 MEETING.
5. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND SUBDIVISION REGULATIONS OF THE CITY OF NEWARK AS THEY RELATE TO DEVELOPMENT FEES.

Mr. Firestone: Item 5, review and consideration of amendments to the Zoning Code and Subdivision Regulations of the City of Newark as they relate to development fees. Go ahead, please.

Mr. Fruehstorfer: Okay, I’ll start briefly by explaining what I handed out to you. There are two attachments. First we’re only going to talk about one. This whole thing has been fluid. Things have changed. So the first attachment there, other than the PowerPoint, is a revision of what was included in the report. There are updates and some corrections in there. So that’s what the first one is. I’ll explain the second one when we get to it.

[Secretary’s note: During the course of his presentation, Mr. Fruehstorfer referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public. The Planning and Development Department report regarding proposed amendments to the Zoning Code as they related to subdivision and zoning fees reads as follows:]

Background

The Planning and Development Department was asked to review current fees associated with activities in Code Chapters 27 Subdivisions and 32 Zoning, and to suggest new fees, as determined appropriate. What we found in our review is that the current City Subdivision and Zoning fees charged do not cover the actual costs to the City to process applications, complete reviews, or perform necessary land development related maintenance, tests, and inspections. In short, the existing fees, which have not been updated since 2006 or earlier than that in some cases, are well below actual costs incurred, and many activities do not currently have a fee associated with them at all, and should.

Methodology

The last review of subdivision fees in 2006 primarily considered the Consumer Price Index (CPI) as a basis for change. At that time, the subdivision fees had not been adjusted since 1982, and a CPI adjustment resulted in substantial increases. Those increases were then compared to other Delaware municipalities’ and county fees and found to be comparable to other localities, but substantially below New Castle County fees, which were considered “high” at the time. The actual costs to the City were not included in the 2006 discussion of fee adjustments.

Based on recent reviews, staff suggests that current fees should be adjusted to better reflect the actual City costs to completely process a land use application. The actual costs for each land use processing activity were calculated by estimating the staff time and associated costs necessary to complete each task. The actual costs to complete the tasks were then compared to a CPI based increase and to current fees charged in other Delaware towns and the County. Generally, the actual costs to the City significantly exceed the CPI based fee adjustments. The new proposed fees are recommended, therefore, to reflect actual costs, but have been constrained to prevent exceeding the New Castle County fees. A spreadsheet detailing current fees for Chapter 27 and Chapter 32 activities, actual calculated costs, CPI adjusted fees, proposed new fees, and other municipality’s and county’s fees is attached. (Table 1)
PROPOSED CHANGES TO CHAPTER 27 - SUBDIVISIONS

Currently there are fees in Chapter 27 for Administrative Subdivisions, Minor Subdivisions, Major Subdivisions, and Stormwater Management Facility (SWM) Maintenance for City-maintained facilities. Staff suggest adjustments to these fees to reflect the actual costs to service them. In addition, staff suggests new fees for a variety of land use and development activities and related reviews. The activities listed below are currently being completed by the City with no codified fees charged to the individuals receiving the service:

- Comprehensive Plan Amendment Applications/Review
- Projects Removed from Agenda of Public Meeting at the Applicant’s Request
- Plan Re-Review
- Construction Improvement Plan Applications
- Sediment and Storm Water Management (SWM) Reviews
- Water and Wastewater Reviews
- Public Works and Water Resources (PWWR) Site Plan Recordation
- SWM Facility Annual Inspections
- Utility Permit Applications
- Right-of-Way Obstruction Permits
- SWM As-built Reviews
- Individual Low Pressure Sewer System (LPSS) Pump Station Plan Reviews
- Private Water/Sewer Pump Station Plan Reviews
- Fire Hydrant Flow Tests
- Residential Standard Plan Reviews
- Non-Residential Standard Plan Reviews
- Sediment and SWM Inspections
- Water Tapping & Inspections
- Sewer Tapping & Inspections
- Water Bacteria Tests
- Sewer Deduct Meters
- Water Meters
- Transmitters

Amendments Discussion

Chapter 27 currently has most of its fees summarized in one single section of the Code, Sec. 27-10 – Schedule of fees. Proposed changes to Sec. 27-10 are summarized below, followed by the proposed amendments. For amendments, new language is shown in bold, italics and underlined, and language to be removed is shown in strikethrough.

- The wording of Sec. 27-10(a) was adjusted to include new fees for maintenance, tests, and inspections.

- The wording of Sec. 27-10(a) was adjusted to reflect a proposed change in recording fees. Currently recording fees are collected at the time of application, and the amendments propose collecting the fees when plans are submitted to the City Secretary for recording. This change is being proposed because the actual cost of recording depends on the number of pages to be recorded, which is not known at the time of application. In addition, the fee will only be required for plans which are approved by Council, and which therefore, require recordation. This change (recording fees being collected when plans are submitted to the City Secretary for recording, rather than at the time of application) also corresponds to the proposed removal of Sec. 27-10(b) because there will be no need to refund the recording fees collected at application as directed by Sec. 27-10(b) if the fees are not paid until they are submitted for recordation. Finally, rather than setting a stagnant fee for recordation, which would
require a Code amendment each time the County raises recordation fees, the proposed amendments contemplate charging the County required fee, plus a 10% administrative charge.

- The numbering of Sec. 27-10(4) was changed to Sec. 27-10(4) for better organization of the fees listed in the Code.

- Sec. 27-10(c) was removed because the fee referred to in Appendix III, Drainage Code, Section I(f) is now included in Sec. 27-10(4) and (5).

- Finally, the rationales for the revised and new fees are included in the attached Table 1 which includes current fees, actual costs, CPI adjusted fees, proposed costs, and other towns’ and county fees.

Proposed Amendments

Sec. 27-10. - Schedule of fees.

(a) Fees for applications, reviews, and required maintenance, tests, and inspections shall be paid prior to or at the time of application or service as shown below. Recordation fees, as shown below, shall be paid when plans are submitted to the City Secretary for recordation. Fees for subdivision application, review, and recordation shall be paid at the time of application as follows:

1. Administrative subdivision ..... $395.00 $50.00
   a. Recordation fee ..... City cost as charged by New Castle County Recorder of Deeds plus a 10% administrative fee $100.00

2. Minor subdivision
   a. Application fee ..... $4,000.00 $200.00
   b. Review fee:
      1. Per dwelling unit ..... $50.00 20.00
      2. For all commercial and industrial development:
         (i) Per acre or fraction thereof for the first 100 acres ..... $50.00/acre
         (ii) Per acre for the remainder of the tract ..... $25.00/acre
   c. Recordation fee ..... City cost as charged by New Castle County Recorder of Deeds plus a 10% administrative fee $175.00

3. Major subdivision
   a. Application fee ..... $6,900 1,000.00
   b. Review fee:
      1. Per dwelling unit ..... $50.00 20.00
      2. For all commercial and industrial development:
         (i) Per acre or fraction thereof for the first 100 acres ..... $50.00/acre
         (ii) Per acre for the remainder of the tract ..... $25.00/acre
   c. Recordation fee ..... City cost as charged by New Castle County Recorder of Deeds plus a 10% administrative fee $750.00

4. Stormwater management facility maintenance fee for city - maintained facilities
   a. Per household for dry retention basin ..... $50.00
b. Per household for infiltration/underground retention facility ..... $900.00
c. Per household for wet detention basin ..... $1,100.00

(4) Comprehensive Plan Amendment Application/Review..... $250.00

(5) Project removed from agenda of public meeting at applicant’s request  
a. Planning Commission Meeting..... A fee of $100 will be charged to remove a project from the Planning Commission agenda less than 7 days before the scheduled meeting. This fee may be waived at the discretion of the Director of Planning and Development if the reason for removal was beyond the control of the applicant.
b. City Council Meeting..... A fee of $150 will be charged to remove a project from the City Council agenda less than 7 days before the scheduled meeting. This fee may be waived at the discretion of the City Secretary if the reason for removal was beyond the control of the applicant.

(6) Re-review Fee..... A re-review fee of $1,000 will be charged in the event of a substantial change in design or upon failure of previous submissions to adequately address Code-mandated requirements by a third submission. This fee may be waived at the discretion of the Director of Public Works and Water Resources or the Director of Planning and Development if the redesign is beyond the control of the applicant.

(7) Construction Improvement Plan Application Fee ..... $250.00

(8) Sediment and Storm Water Management (SWM) Review  
a. Less than 1 acre..... $750.00  
b. 1 Acre or greater..... $750.00 plus $250.00/acre

(9) Water and Wastewater Review  
a. Less than 2,000 GPD..... $500.00  
b. 2,000 GPD or greater..... $1,000.00

(10) Public Works and Water Resources (PWWR) Site Plan Recordation..... City cost as charged by New Castle County Recorder of Deeds plus a 10% administrative fee

(11) Stormwater management facility maintenance fee for city-maintained facilities  
a. Per household for dry retention basin ..... $550.00  
b. Per household for infiltration/underground retention facility ..... $900.00  
c. Per household for wet detention basin ..... $1,100.00

(12) SWM Facility Annual Inspection  
a. Inspection Fee..... $150.00  
b. Re-inspection Fee..... $100.00

(13) Utility Permits Application..... $50.00

(14) Right-of-way Obstruction Permit Application..... $50.00
(15) Storm Water Management (SWM) As-built Review..... $250.00

(16) Individual Low Pressure Sewer System (LPSS) Pump Station Plan Review..... $250.00

(17) Private Water/Sewer PS (Pump Station) Plan Review..... $1,500

(18) Fire Hydrant Flow Test..... $300.00

(19) Residential Standard Plan Review..... $150.00/acre with $150.00 minimum

(20) Non-Residential Standard Plan Review..... $150

(21) Sediment and SWM Inspection
  a. Less than 1 acre.. $1,250.00
  b. 1-5 acres..... $1,500.00
  c. 5-10 acres..... $2,000.00
  d. Greater than 10 acres..... $4,000.00

(22) Water Tapping & Inspection Fee
  a. Single Family (Fire Tap Included)..... $250.00
  b. 4” – 6”..... $500.00
  c. 8”+..... $1,000.00

(23) Sewer Tapping & Inspection Fees
  a. 4” – 6”..... $500.00
  b. 8”+..... $1,000.00

(24) Water Bacteria Test
  a. Normal Test..... $100.00 plus Cost
  b. Rush Test..... $200.00 plus Cost

(25) Sewer Deduct Meter (Annual Fee)
  a. 5/8” – 6” ..... $50.00

(26) Water Meter Fee..... current Meter Cost

(27) Transmitter Fee..... current Transmitter Cost

(b) When a subdivision is not approved by city council or if the applicant withdraws his application prior to consideration by either the planning commission or city council, the recordation fees collected at the time of application shall be refunded to the applicant.

c. Sediment and stormwater permit. See Appendix III, Drainage Code, Section I(f).

In addition to the above, Chapter 27, Appendix III, Drainage Code, Section I(f) should be removed as shown below. As mentioned earlier, this subsection does not reflect current State of Delaware requirements and city activities required for sediment and stormwater reviews, and sediment and stormwater permit fees have been included in other recommended fees in Sec. 27-10(a)(21).

(f) Sediment and stormwater permit fee. The public works department shall collect a permit fee at the time constructions plans for erosion and
sediment control and stormwater management are submitted for review. The minimum fee shall be $125.00 per disturbed acre per project. The fee for acreage and fractions of acreage greater than one shall be at the rate of $125.00 per acre or fraction thereof. The fee for a general permit shall be $25.00. A general permit shall be required pursuant to the Delaware Sediment and Stormwater Regulations, Section II, or as deemed necessary for specific land-disturbing activities as determined by the public works director.

**PROPOSED CHANGES TO CHAPTER 32 - ZONING**

Currently there are fees in Chapter 32 for appeals to the Board of Adjustment (variances), Special Use Permits, Rezonings, and Site Plan Approval applications. In addition to increases to these fees, staff suggests adding new fees for Parking Waiver applications and removal of a project from a public meeting agenda at the applicant’s request.

Unfortunately, unlike Chapter 27, Chapter 32 does not have its fees summarized in one section. To make current fees clear, and to aid in future fee adjustments, staff recommends creating a new section, Sec. 32-3.1 – Schedule of fees, which indicates fees for activities associated with Chapter 32. To accommodate this reorganization, the current fee values throughout Chapter 32 will also have to be removed from the various sections of Chapter 32 and replaced with a reference to the new schedule of fees subsection of Sec. 32-3.1.

The recommended amendments include the following considerations:

- Sec. 32-3.1 (a)(1)a has been changed from referencing “residential” uses to “single family” uses to better distinguish between single family and multi-family applications, and the time and review requirement differences between the two categories.

- As noted above, we are proposing a new Parking Waiver application fee to reflect the staff time required to review a parking waiver request and present it to the Planning Commission for review. This proposed fee is not the same as the Parking Waiver fee required in lieu of parking. Because the fee in lieu of parking is not a simple fee, but is instead part of a calculation described in Sec. 32-45(b)(9), rather than listing a fee in lieu of parking in Sec. 32-3.1, that new fee section will instead reference the description in Sec. 32-45(b)(9).

- Finally, the rationale for the revised and new fees is included in the attached Table 1 which includes current fees, actual costs, CPI adjusted fees, proposed costs, and other municipalities’ and county fees.

The proposed new Sec. 32-3.1 is shown below. As the Code section is new, it is shown in bold, italics and underlined. In addition, where appropriate, existing fees are shown with strikethrough to clarify changes in existing fees.

**Proposed Amendments**

**Sec. 32-3.1 – Schedule of fees.**

(a) **Fees for Board of Adjustment, applications for Special Use Permit, Rezonings, Site Plan Approval, Parking Waiver, and Comprehensive Plan Amendment applications shall be paid at the time of application as follows:**

(1) **Board of Adjustment**
   a. Single family use ..... $250 $100
   b. Any use other than a single family..... $1,000 $500
c. Request for continuance of an appeal for variance... $150 $100

(2) Special Use Permit
a. A fee of $600 for residential districts $150
b. A fee of $900 for university, business, and industrial districts $650

(3) Rezoning
a. Application petition fee... $1,000 $100
b. Review fee
   i. $25.00 per acre or fraction thereof for the first 100 acres;
   ii. $10.00 per acre or fraction thereof for the next 40 acres;
   iii. $5.00 per acre or fraction thereof for the next 50 acres;
   iv. $1.00 per acre for the remainder of the tract.
   v. $20 per parcel or condo unit

(4) Site Plan Approval
a. Application-petition fee... $700 $100
b. Review fee
   i. Office and commercial... $10 per 1,000 square feet $1
   ii. Residential... $10 per dwelling unit $1

(5) Parking Waiver
a. Application-petition fee... $300
b. Fee in lieu of the required spaces... refer to Sec. 32-45(b)(9)

(6) Project removed from agenda of public meeting at the applicant’s request
a. Planning Commission Meeting... A fee of $100.00 will be charged to remove a project from the Planning Commission agenda less than 7 days before the scheduled meeting. This fee may be waived at the discretion of the Director of Planning and Development if the reason for removal was beyond the control of the applicant.
b. City Council Meeting... A fee of $150.00 will be charged to remove a project from the City Council agenda less than 7 days before the scheduled meeting. This fee may be waived at the discretion of the City Secretary if the reason for removal was beyond the control of the applicant.
c. Board of Adjustment Meeting... A fee of $150.00 will be charged to remove a project from the Board of Adjustment agenda less than 7 days before the scheduled meeting. This fee may be waived at the discretion of the City Secretary if the reason for removal was beyond the control of the applicant.

To reiterate, as described above and referenced in Sec. 32-3.1(a)(5), staff is recommending a new application fee for plans which include a Parking Waiver request to reflect the staff time required to review a Parking Waiver application and present it to the Planning Commission for consideration. Sec. 32-45(b)(3)d below indicates the addition of the proposed fee and the resulting reference to Sec. 32-3.1 (a)(5)a where the proposed application fee is listed.

ARTICLE XIV. - OFF-STREET PARKING AND LOADING REQUIREMENTS
Sec. 32-45. - Off-street parking requirements.
(b) **BB central business district off-street parking option.**

(3) Property owners, land developers, or other land users of BB zoned property, may apply at their option to the planning department for the off-street parking standard waiver as specified herein by submitting the following:

a. A letter, statement, or report from the owner, or land developer, requesting the off-street parking standard reduction, including the applicant’s evaluation of the proposed reduction in terms of the conditions to be reviewed by the planning commission stated herein.

b. 15 copies of a site plan showing the existing and proposed use and building, existing and proposed off-street parking, and adjacent or nearby to-be-shared or utilized public or private off-street parking facilities, bearing the certificate, signature, and seal of a Delaware registered engineer or land surveyor. The plan shall conform to all other related zoning code, subdivision and development regulations, and municipal code requirements.

c. 15 copies of an area map showing the location of the proposed use and its relationship to adjoining properties.

d. **The applicant shall submit an application fee as indicated in Sec. 32-3.1 (a)(5)a.**

As previously discussed, Code sections which currently list associated fees, and which are proposed for inclusion in new fee Section 32-3.1 will need to be amended to delete the current fee and reference the appropriate fee section. Each impacted section is reviewed below. Again, new language is in bold, italics and underlined. Language to be deleted is shown in strike through.

**ARTICLE XIX. - BOARD OF ADJUSTMENT**

**Sec. 32-63. - Filing fee.**

A fee, **indicated in Sec. 32-3.1(a)(1)(a), of $100.00** shall accompany each appeal for a variance in a residential district single family use, and a fee, **indicated in Sec. 32-3.1(a)(1)(b), of $500.00** shall accompany each appeal for a variance for all uses other than single family in all other zoning districts; provided, however, the filing fee may be refunded at the board of adjustment’s discretion under the following conditions. A fee, **indicated in Sec. 32-3.1(a)(1)(c) of $100.00** shall accompany each applicant’s request for a continuance of an appeal for a variance in a residential district, and a fee of **$500.00** shall accompany each applicant’s request for a continuance of an appeal for a variance in all other zoning districts; provided, however, the continuance fee may be refunded or reduced at the board of adjustment’s discretion under the conditions contained in subsections (a) and (b) below.

(a) The applicant must apply at the meeting of the board of adjustment when his application is heard; and

(b) The applicant must show:

(1) The appeal was filed as a result of a valid order of the City of Newark requiring the applicant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or

(2) The applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or

(3) The board of adjustment determines that it does not have jurisdiction to decide the applicant’s appeal.

**ARTICLE XX. - INTERPRETATION AND ADMINISTRATION**
Sec. 32-78. - Special use permit.

(a) The following procedures shall apply governing the implementation of special use permits:

(4) Written application for a special use permit, plans, and supporting materials shall be filed with the planning department. Every application shall be accompanied by a fee, indicated in Sec. 32-3.1(a)(2)(a), of $150.00 for residential districts and a fee, indicated in Sec. 32-3.1(a)(2)(b), $650.00 for university, business, and industrial districts. All applications for uses proposed to be constructed on properties one acre or more in size shall be referred to the planning commission for consideration and recommendation; all other applications shall be forwarded directly to council for consideration. The time of council hearing shall be within one month of the special use permit application filing date for properties less than one acre in size; the time of the hearing for properties larger than one acre shall be within one month of the planning commission recommendations. A reasonable effort shall be made to give 10 days notice by mail of Planning Commission and/or City Council public hearings to all property owners of record, according to ownership data available at Newark, whose property is immediately adjacent to or within 300 feet of the property for which the special use permit is requested.

ARTICLE XXI. - AMENDMENT

Sec. 32-81. - Filing fees.

(a) Application—petition fee. A nonrefundable fee, indicated in Sec. 32-3.1(a)(3)(a), of $100.00 shall accompany each application or petition for rezoning, except for those petitions which have been initiated by the council or by the planning commission.

(b) Same—review fee. After modification by the planning department that the application or petition for rezoning has been received, the applicant shall be required to submit the following review fee:

(1) $25.00 per acre or fraction thereof for the first 100 acres;
(2) $10.00 per acre or fraction thereof for the next 40 acres;
(3) $5.00 per acre or fraction thereof for the next 50 acres;
(4) $1.00 per acre for the remainder of the tract.

(c) Waiving of fees. Planning commission may recommend to city council waiving any and all of the above fees if it is determined that an applicant would suffer any unnecessary financial hardship or inconvenience.

ARTICLE XXVII. - SITE PLAN APPROVAL

Sec. 32-101. - Fees.

(a) Each applicant shall remit a nonrefundable fee, indicated in Sec. 32-3.1(a)(4)(a), payable to the city of $100.00 when filing application to the city for site plan approval, plus a review fee as indicated in Sec. 32-3.1(a)(4)(b).

- $1.00 per 1,000 square feet of office and commercial space, and,
- $1.00 per dwelling unit.

APPENDIX B-1 - CITY OF NEWARK, DELAWARE BOARD OF ADJUSTMENT INSTRUCTIONS TO APPELLANTS

C. FILING FEE
A fee, indicated in Sec. 32-3.1(a)(2)(a), of $50.00 shall accompany each appeal for a variance in a residential district, and a fee, indicated in Sec. 32-3.1(a)(2)(a), of $100.00 shall accompany each appeal for a variance in all other zoning districts. However, if the appeal is filed as a result of a valid order of the City of Newark requiring the appellant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or the applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or the board of adjustment determines that it does not have jurisdiction to decide the applicant’s appeal, the board of adjustment may, in the exercise of its discretion, direct that the filing fee be refunded. Checks should be made payable to the City of Newark. Receipt of payment may be given in person or will accompany notification of hearing.

G. SUMMARY REQUIREMENTS
1. Payment, indicated in Sec. 32-3.1(a)(2)(a/b) of the $50.00 or $100.00 fee for each application or appeal.

RULES OF PROCEDURE
OF THE BOARD OF ADJUSTMENT
OF THE CITY OF NEWARK STATE OF DELAWARE
ARTICLE VII. - DATA REQUIREMENTS

Section 4. Filing fee in accordance with Section 32-63 is indicated in Sec. 32-3.1(a)(2)(a/b). shall be $50.00 for a variance in a residential district, and $100.00 for a variance in all other zoning districts. {8-10-81}

Recommendation

Because the City’s current land development related fees do not represent the actual costs to process these applications, and because many land development activities do not currently have codified fees associated with them, the Planning and Development Department and the Public Works and Water Resources Department recommend adjusting and adding fees as detailed in this report.

Mr. Fruehstorfer: First of all I’ll start with some background to explain how we got where we are. The land development fees in Chapters 27 and 32 were last revised in 2006. At that point it had been over 20 years. It hadn’t been updated since 1983. At that time, basically, they just updated them with CPI changes and some comparison to other municipalities. And because it had been over 20 years, that CPI change was rather significant and the fees were in-line with other municipalities other than New Castle County. A look back at the minutes from the last meeting, they thought New Castle County fees were high and they didn’t use those as rationale for setting the fees. They also mentioned that no attempts were made at the time to cover actual costs with the fees.

So where we’re currently at, since 2006 the City’s financial strategies have changed. Currently, rather than lumping all City revenue together and just covering expenses that are required, there’s more of an attempt to have more connection between revenue and expenses. With that in mind, the City staff has estimated the costs associated with land development related tasks in Chapters 27 and 32. Fee changes have been recommended to more closely relate to those actual costs and new fees have been recommended for some work that does not currently have fees.

The methodology we used to come up with these new fees, first of all we looked at the CPI-based adjustments and we compared those to what the actual costs were. We found that those costs were well above the CPI values, well above other municipalities and, in a lot of instances, they were pretty comparable to the New Castle County fees. So, generally, our new
fees were recommended based on actual costs, more so than before, but they're somewhat limited based on staff's judgment and also to keep Newark fees at or below New Castle County fees.

So this leads to the next attachment that I handed out. What I’ve done . . . this is kind of a little backwards . . . before talking about the actual changes in fees, I'm going to show you what the changes in fees have resulted in. We took two jobs recently done in the City and we estimated what the developer would have paid for those jobs with Newark’s current fees, with the recommended fees that we have and we’re going to talk about here, and we’ve compared that to New Castle County fees.

So a one acre mixed use apartments over commercial, 36 units, 62,000 square feet major subdivision with rezoning and special use permit, with our existing fees costs about $3,500. With our recommended fees that goes up to almost $17,000. And if you were to do that development in New Castle County, it would be $43,500.

Another job we looked at was a little under one acre, another mixed use apartments, 12 units over 26,000 square feet, again, a major subdivision with rezoning. This one had a Comprehensive Development Plan amendment and a special use permit. The costs with Newark’s existing fees is around $3,000, almost $15,000 with the revised fees, and costs with the existing New Castle County fees would be almost $30,000, or $27,675. Okay?

So next I’m prepared to go into as much detail or as little detail as we want, just to basically tell you that Chapter 27 and Chapter 32 are laid out a little differently. Chapter 27 had a section upfront that included all the fees. Chapter 32 listed the fees when it talked about each action through the chapter. We thought having all the fees upfront made a lot of sense. So what we’ve done, in Chapter 27, we added all those fees. Chapter 32 listed the fees when it talked about each action through the chapter. We thought having all the fees upfront made a lot of sense. So what we’ve done, in Chapter 27, we added all those fees. You’ll see that in the report. It’s explained pretty clearly on the report. In Chapter 32 we made a new section that includes all the fees and then in Chapter 32 where we used to reference fees, where it used to have the fees, we’ve referenced the new section. We’ve taken the fees out of the chapter and put it in the fee section upfront. So anytime in the future if someone wants to update fees, all you need to do it go to those sections and update the fees. So that’s generally what we’ve done.

So what I have now is each one of those fees I’ve generally put together what’s included in those fees. The work that the City is doing. What the current fee is. What it is with the CPI revision. What it costs the City. That’s the City's labor, direct costs. What the New Castle County fee is. What our recommended fee is. And the estimated new revenue per year that it’s going to bring the City. And that’s based on an average of how many of those jobs we would have done over the last three years, generally. So that’s just a general idea of how much money that’s going to be adding to the City’s budget. So I’ve got this for each line. There are only a few I need to talk about because, as I said, this has been fluid. Some things have changed since the report went out and we have a couple of wording changes to make. So we can hit those but, at this point, I’d like to concentrate more on the numbers. That’s what’s more important. If you have changes to make in the wording, we can talk about that, but at this point I’ll leave it up to you.

Mr. Stozek: Tom, just a question. The methodology, I assume it’s primarily based on man-hours.

Mr. Fruehstorfer: Yes, primarily.

Mr. Stozek: And because of that I would say going forward we should not use CPI to make adjustments. I don’t know how often we’re going to do it but CPI has no relationship to the man-hours involved. Do you know what the methodology is that the County uses? Because the numbers are substantially different.
Mr. Fruehstorfer: They’re substantially different. I’ve talked to Dave Culver, who used to work at the County, and he thinks their costs generally represent their efforts. So as you go through here, you’ll see that we don’t always recommend costs. Some of our costs are a bit under it. So that’s something, that’s what our staff thought with judgment, these are rates that we think make sense, but that’s open for discussion. You’re welcome to make suggestions and I’m sure Council will likely make some suggestions on what those fees, what they want them to be.

Mr. Silverman: Mr. Chairman? I apologize for missing your opening remarks. An additional fee that New Castle County has is the fees imposed by the State Fire Marshal’s office for their own inspection. So that’s a fee on top of the normal building fees. The City has its own fire marshal review and inspection program, so that, I believe, would be a cost savings to an applicant who came into the City. So that’s another external governmental fee that the City doesn’t seem to break out here.

Mr. Fruehstorfer: And there were definitely other County fees, also. If you look closely at the second hand-out I have to try to match the numbers, you’ll see I had to take some liberties because we base costs, maybe, based on units, where the County is basing it on acres. And so I had to do some estimating through there. They definitely don’t compare apples to oranges, but I estimated it pretty closely. And there were, I’m sure, other things that the County is charging for that may come in but I think I’ve gotten most of the County fees, but there certainly could be more.

Mr. Silverman: And I do support your adjustments. We’re an incorporated place. We’re a city. New Castle County is primarily a suburban area, so doing things per 100 acres of this or 50 acres of that, they’re things that just are not applicable to the City of Newark. So I think the adjustments you made are realistic and reflect our needs.

Mr. Fruehstorfer: So do I have some feedback on whether we want to look through each one of these or do you want me to just jump to the ones that I think we need to talk about because they need to make a change?

Mr. Firestone: Why don’t you just hit the highlights?

Mr. Fruehstorfer: Okay. One of the changes came from our City Secretary and Solicitor. This was pulling a project from the agenda and, actually the next one is going to be very similar . . . the fees we have and we’re adding a way for our Director of Planning and Development or our Director of Public Works or City Secretary, whoever is involved in those fees, to waive the fees at their discretion. So the thought when I put this together was rather than just leaving it to their discretion, we were putting in something to kind of describe what they would base that on. Based on the discussions with the different Directors and the Solicitor, we decided it was probably just best to remove that. So there are several spots where, basically, simply, all we’re thinking right now is that we wanted to say at the discretion of the Director of Planning and Development, and cross out if the reason for removal was beyond the control of the applicants.

Ms. Feeney Roser: Cross out meaning based on what you had originally proposed, not what is in Code now, correct? I mean, anything that’s struck through . . .

Mr. Fruehstorfer: Right. It’s not what’s in Code. It’s anything that’s changing from what we included in the report.

Ms. Feeney Roser: Oh, in the report. I understand.

Mr. Fruehstorfer: So everything underlined here is new. This is new to our, new recommendation, but right now we’re saying we don’t want to say . . .

Ms. Feeney Roser: But the strike-out is the difference between the report and what you’re proposing now?
Mr. Fruehstorfer: Yes.

Mr. Firestone: I mean it’s okay but there’s no bounds to your discretion. I mean you could act completely arbitrarily. I don’t think it’s a very good standard.

Ms. Feeney Roser: Well I . . .

Mr. Firestone: To just give it to your discretion. It’s standard-less.

Ms. Feeney Roser: Well I think that you do need some discretion, though. And we may have to talk about how you want to qualify that. But this would say, perhaps there was a death in the family and they couldn’t be at the Planning Commission. Then I’m going to pull it for them and I wouldn’t think that a $100 fee would be appropriate. On the other hand, if we’re all ready to go and they just don’t want to come or they’ve decided they want to change their plan or do something like that, we might impose that fee because we’ve already incurred expenses to advertise it.

Mr. Fruehstorfer: The comment made by one of the people suggesting this change was if our discretion can’t be trusted, we don’t belong in this position. So that was the thought.

Ms. Feeney Roser: That wasn’t me.

Mr. Firestone: Generally you have to have some standard of discretion otherwise it’s just arbitrary. You get to decide what’s a good idea or reason, and what a bad reason is.

Mr. Cronin: It seems to me that . . . this is Bob Cronin . . . that if, I guess you’re trying to recover some advertising costs, then everybody gets slapped with an advertising fee to begin with and then there’s no fee if it’s withdrawn because you’ve already covered that cost.

Mr. Fruehstorfer: If it needs to be re-advertised again to remove it from the agenda, is my understanding.

Mr. Cronin: Well not necessarily. I mean if they come in and pull it that day, for whatever reason, you’re not going to advertise it.

Ms. Feeney Roser: There’s new posting that’s done, but it doesn’t go in the newspaper.

Mr. Cronin: Right. I agree with the Chairman. It is standard-less without . . .

Ms. Feeney Roser: So does the Commission believe that “if the reason for removal was beyond the control of the applicant” should be added back in? Is that enough reason? Does that address your concern?

Mr. Cronin: Maureen, let me ask you, how many times during the course of the year does this sort of thing happen?

Ms. Feeney Roser: It has not happened . . . in my tenure as Planning and Development Director, I have pulled things from the agenda, not the applicant. That’s why it says at the applicant’s request. Because I may pull it because I don’t think it’s ready and I went to the trouble to go and post it when I was not finished my report.

Mr. Cronin: So if we haven’t had a history of this happening very much at all . . .

Ms. Feeney Roser: It’s happened a lot at Council meetings, actually it happens a lot at Council.

Mr. Firestone: It seems if you have the “if” clause you don’t need the discretion of the Director of Planning. It just should . . . the fee should be waived if the reason for the removal was beyond the control of the applicant.

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Ms. Feeney Roser: Well somebody’s got to make the decision.

Mr. Firestone: Yes, you have to make the decision, but . . . the way . . . if you have discretion, you could decide, even if the reason was beyond the control of the applicant, not to do it. Because you have discretion. And what I’m saying is . . .

Ms. Feeney Roser: So you would like that sentence to read this fee may be waived if the reason for the removal was beyond the control of the applicant?

Mr. Firestone: Yes.

Mr. Silverman: And there’s still . . .

Mr. Firestone: Or it could say will be waived.

Mr. Cronin: But suppose the applicant doesn’t pay the waiver charge?

Mr. McIntosh: Put them in jail.

Ms. Feeney Roser: Well, I mean, that’s an . . .

Mr. Fruehstorfer: They won’t be able to get back on again.

Ms. Feeney Roser: They won’t get back on.

Mr. Cronin: Personally, I think it’s just a nominal cost and it happens so infrequently that the City just ought to absorb it and not try to . . .

Ms. Feeney Roser: It happens frequently at Council meetings. This was actually a recommendation of the City Secretary. Now if you want to take out Planning Commission because you don’t feel comfortable with that, I don’t think we care. But the City Secretary is going to care.

Mr. Fruehstorfer: She definitely is.

Mr. Silverman: It’s the kind of thing where the applicant looks around the room and says hey I don’t have the votes on Council tonight . . .

Ms. Feeney Roser: Exactly.

Mr. Silverman: I’m going to withdraw this. And then they only pay an application fee once. They get their issues straightened out and they want to be on a meeting three months later, it’s on the City taxpayers to advertise it that second time. That’s what we’re getting at.

Ms. Feeney Roser: And it’s been done three and four times based on . . .

Mr. Fruehstorfer: And it’s all the City staff who have to do all the work to make it all happen again.

Mr. Cronin: Then perhaps the structure ought to be more subsequent advertising, second or third round, for essentially the same thing as the fee to cover the increased cost, as opposed to docking somebody for what could be a one-time withdrawal.

Mr. Silverman: Do you mean go proactive and say every advertising of the applicant’s proposal shall be accompanied by a $100 fee? So if they withdraw two times . . .

Mr. Cronin: Yes, every necessary application or required advertising. Something like that.
Mr. Silverman: So flip the entire logic around.

Ms. Feeney Roser: So the idea is that if an item was removed from the agenda at the request of the applicant for reasons . . .

Mr. Silverman: Not even for reasons. At the request of the applicant. It costs them to get on the agenda again next time.

Ms. Feeney Roser: So you’re saying a re-advertising fee of $100 would be charged?

Mr. Silverman: Yes, rather than trying to collect it after they walk away.

Mr. Cronin: Yes, approaching it that way, I think, is better, if you’re going to do it that way at all.

Ms. Feeney Roser: Okay, I’ll keep track of that. Go ahead.

Mr. Fruehstorfer: Okay, and it’s the same thing, same change with the re-review fee. We’re suggesting a re-review fee of $1,000 to be charged in the event of a substantial change in design or upon failure of previous admissions to adequately address Code-mandated requirements by a third submission. This fee may be waived at the discretion of the Director of Public Works and Water Resources or the Director of Planning and Development. We’re going to recommend removing what’s crossed out there, but we could make a similar . . . well it’s not really going to be a similar situation here.

Mr. Cronin: So, Tom, I noticed you said requirements by a third submission, so we’re kind of comping a second submission?

Mr. Fruehstorfer: Typically what happens is someone makes a submission, they’ll be comments from the City and they’ll resubmit again. Often there are other comments that still happen and they resubmit again. At that point, if they don’t get it, then we’re charging them another $1,000 to look at it again. And this happens every time, I think, it’s resubmitted through the County.

Mr. Silverman: Mr. Chairman?

Mr. Firestone: Yes.

Mr. Silverman: On this, if the re-review is caused by an external agency . . . let’s say DNREC has asked to comment and they’re late. Or July 1 the DNREC standards change and this applicant has worked with DNREC before July 1 and they don’t get on the agenda until after July 1, and there’s a new set of standards.

Mr. Fruehstorfer: I think that’s where discretion comes in.

Mr. Silverman: Okay, that’s where the discretion would come in. Okay.

Ms. Feeney Roser: DelDOT has done that, too.

Mr. Silverman: DelDOT does that, too.

Mr. Fruehstorfer: And our Directors aren’t going to just charge people $1,000 for something that’s beyond their control. That’s not the way we do business.

Mr. Silverman: So these beyond control is more than what Maureen was talking about with the individual, there’s a death in the family, the engineering firm goes belly-up two days or two weeks before. This would be other agencies who are required to be part of the process, don’t submit.
Mr. Fruehstorfer: Maybe Tom would be good to comment on this because it’s his department that gets to look at these over and over again.

Mr. Tom Coleman: One other way I think that this could come up is if my reviewer identifies something on a second review that we may have missed in the first review. We’re not going to charge them a fee because we missed something. So that would be another instance where we might need a third and feel the need to waive. But, generally, this is more to capture people that resubmit and haven’t addressed all the comments that were in the original comment letter. Just blatantly disregarded things or didn’t . . .

Mr. Silverman: Or the engineering firm that wants you to do their work.

Mr. Coleman: Design by review? Yes.

Mr. Silverman: They keep submitting it for review to have you design their project, correct?

Mr. Coleman: Or if initial design has an underground stormwater system and then halfway through they decide they want to do a surface system, then . . .

Mr. Silverman: Okay.

Mr. Firestone: Could we say something like the fee may be waived for good cause shown?

Mr. Silverman: I would be very comfortable with that.

Ms. Feeney Roser: So it would be this fee may be waived for good cause shown? At the discretion, or not?

Mr. Firestone: You already have the word may, which already gives you discretion. It just says this fee may be waived by the Director of Public Works and Water Resources or the Director of Planning and Development for good cause shown.

Mr. Coleman: Works for me.

Mr. Silverman: And that’s a defined legal term and you can wrestle with it.

Ms. Feeney Roser: That’s fine.

Mr. Firestone: It makes it clear the burden is on the applicant to show good cause.

Mr. Cronin: I would take the for good cause shown and start the sentence with that phrase. For good cause shown, this fee may be waived by one of . . .

Mr. Silverman: Okay, puts it up front?

Mr. Cronin: Yes, put it up front. I would, personally.

Mr. Silverman: Good wording.

Mr. Fruehstorfer: Okay.

Ms. Feeney Roser: Got it.

Mr. McIntosh: This is good.

Ms. Feeney Roser: See that, Frank, moving right along.
Mr. Fruehstorfer: And this is the same instance. This is the first time we’re removing stuff from the agenda was Chapter 27. This is now Chapter 32. It may look like some of this is a repeat but there are times when something could be presented just through Chapter 32 and not in Chapter 27. An example would be a special use permit. So it’s not captured under the other one, so . . . and this is also with Board of Adjustment. One of the problems I think the City Secretary wanted this in here so I think this would be the exact same wording that we changed the first one to.

Mr. Firestone: Right. So for all of them you would say for good cause shown, whoever may waive.

Mr. Fruehstorfer: So that’s what you want to change the first pulling from the agenda to also?

Mr. Silverman: Yes.

Mr. Cronin: Do you think we’re going to need a new staff position to be fee collector for the City? We have so many fees.

Mr. Fruehstorfer: I think we’re simplifying. And I guess the other thing we didn’t talk about, recording fees, I wanted to mention that when I was going through. Right now, recording fees are often collected upfront. We don’t really know how many sheets are going to get recorded so we’re basically changing all the recording fees. This is all explained in the report, also. We’re changing the recording fees to being paid at the time the drawings are submitted to the City Secretary. So she’ll know then how many sheets there are and charge the correct amount from the Recorder of Deeds plus a 10% administration fee. Other than that, if you’re okay with the fees, that’s about all I have.

Mr. Firestone: Is there any public comment? Any discussion by any of the Commissioners?

Mr. Stozek: Yes, just a question. How often do you think you would review these fees? Every year, or five years? Any thoughts about that?

Ms. Feeney Roser: I think we ought to review them much more often than we have. If you want to make a suggestion, we can make that part of the recommendation.

Mr. Stozek: I don’t know what’s comfortable for you. Maybe every two years or something like that. And then I would just say, think about since labor is the biggest part of this, I think that’s what the fees, increases or decreases, should be based on. If everybody gets a 2% raise every year, then the fees ought to go up.

Mr. Silverman: Then let’s make that a shall be reviewed every two years.

Ms. Feeney Roser: Where do we put that?

Mr. Stozek: Is two years reasonable?

Mr. Fruehstorfer: In the first paragraph where it lists the fees.

Ms. Feeney Roser: I don’t see why not. I think that’s a good plan to do that.

Mr. Coleman: I know Tom put an exorbitant amount of effort into this one but I’m pretty sure the framework is pretty much built now.

Mr. Fruehstorfer: Yes, it will be a lot easier.

Ms. Feeney Roser: Yes.

Mr. Firestone: Especially if you only do it every two years.
Mr. Fruehstorfer: So in 27-10(a), the fees for applications, reviews and required maintenance below, these fees shall be reviewed?

Ms. Feeney Roser: Yes. Bruce, is that okay?

Mr. Herron: Yes.

Mr. Fruehstorfer: And then in 32, that’s in 32-3.1 Schedule of Fees, add the same thing?

Ms. Feeney Roser: Where is that, Tom?

Mr. Fruehstorfer: 32-3.1 is what we added in 32. The beginning of what we added. So (a) is where we list fees for Board of Adjustment applications, special use permits, etc. shall be paid at the time of the application as follows. We can just add a line there that says that these fees shall be reviewed every two years.

Ms. Feeney Roser: Shall be reviewed every two years.

Mr. Fruehstorfer: And should we say and updated based on the raises of . . .

Mr. Firestone: I would say using the methodology that you used . . .

Ms. Feeney Roser: They could go down.

Mr. Fruehstorfer: They could go down or they could go up.

Ms. Feeney Roser: I could retire and the next Planning Director hasn’t been here 32 years. It could go down if you do that. So I would say it should just be reviewed and the Commission can decide what basis they want to review it on.

Mr. Fruehstorfer: And a lot of these fees are well below cost so someone could decide in the future that they wanted to recover more costs also.

Mr. Silverman: Yes, if there was a Council that said 100% of the burden shall be borne by . . . and I think you’ll find that’s one of the reasons why New Castle County fees are the way they are. That choice was made not to have the public subsidize the development community.

Mr. Fruehstorfer: I still don’t think we’d be all the way up to New Castle County. We’d be quite a bit . . .

Mr. Coleman: They’re about double.

Ms. Feeney Roser: And these are considerable increases as we speak. I’d like to make sure we can get them through.

Mr. Firestone: Okay, the chair will entertain a motion.

Mr. Cronin: So moved.

Ms. Feeney Roser: Do you need us to review, again, what we’ve changed?

Mr. Cronin: Well, I’d like you to.

Mr. Firestone: Why don’t you quickly review what was changed.

Ms. Feeney Roser: Okay, in 27-10(a) we added these fees shall be reviewed every two years. For anything removed from the public agenda, it would say should a project be removed at the
request of the applicant, a re-advertising fee of $100 will be charged to be placed on a subsequent agenda. This fee may be waived for good cause.

Mr. Fruehstorfer: I have those sections called out if you want to include those.

Mr. Firestone: All the other sections where it previously said . . .

Mr. Fruehstorfer: That’s good enough?

Mr. Firestone: At the discretion, it will then say for good cause shown, the fee may be waived.

Ms. Feeney Roser: Right. Was that it?

Mr. Firestone: Okay, is there a . . .

Mr. Cronin: Discussion?

Mr. Silverman: We need a second. I’ll second it.

Mr. Firestone: Is there any discussion on the motion?

Mr. Cronin: Yes, Mr. Chairman. I guess on frame #8 and #10, minor subdivision fees going from $375 to $4,800. Major subdivision from $1,000 to $8,000. These are big, big increases. The question in my mind is, you know, somebody has a proposal and they’re paying something to the City government, that’s their [inaudible] in good faith, suppose it gets rejected and turn down, whether it’s by Council, with or without a recommendation?

Ms. Feeney Roser: Well that happens now.

Mr. Cronin: That’s a lot of money to lose in addition to what they’ve already put into engineering costs and every other cost.

Ms. Feeney Roser: Right.

Mr. Cronin: So it’s . . .

Ms. Feeney Roser: Right now the Code only allows us to give them back the recording fee if they are not approved.

Mr. Fruehstorfer: Which is one of the things we crossed out.

Ms. Feeney Roser: And we wouldn’t have to do that with this because we’re not charging the recording fee until after a project is approved.

Mr. Fruehstorfer: Correct.

Ms. Feeney Roser: But, yes, you are correct. I mean it’s an up-front expense that they will not recoup if they don’t get approved.

Mr. Cronin: I think it can tend to put an additional burden or certainly a cost increase for development and growth. I’m not sure that’s exactly what we want to do.

Mr. Fruehstorfer: If I can add . . .

Mr. Cronin: Sure, I’d like to have some thoughts on that. Sure.

Mr. Fruehstorfer: Discussion I’ve had with a developer, at least one developer has told me our developing fees are ridiculously low and should be raised. So, I . . .
Ms. Feeney Roser: We don’t know whether he was talking about to this extent.

Mr. Fruehstorfer: I won’t say who, and it doesn’t matter, but you can see what our fees are compared to County fees. So what someone working in the County has to do is a lot more, our fees are still way lower than the County.

Ms. Feeney Roser: We also did the research for others besides the County. We looked around to where we could do apples-to-apples.

Mr. Fruehstorfer: Yes, and our fees are definitely going to be higher than other places but those other places may get their money from different sources. And right now our goal is to try to move towards getting money from where the costs come from. And the effort that the City puts into these reviews is substantial. And one thing to keep in mind is that the estimated hours here are the base. If something weird is happening, if there’s something complicated about the job, it’s a lot more. These aren’t inflated numbers at all. So a job that has something interesting or unusual happen with it, costs are going to be way beyond this for the City.

Mr. Cronin: I guess my concern might be the possibility of unintended consequences. You know, maybe rather than a big jump so quickly in one fell swoop, maybe a graduated increase. If you’re talking about $8,000 total, go $3,000, $3,000 and $2,000 over three years, or something like that. See how it plays out.

Mr. Silverman: I would suggest that the unintended consequence would be everybody trying to get their project done this year under the lowest rate without any thought going into it to avoid the future fees.

Mr. Fruehstorfer: And in two years we could always do the opposite and lower them.

Mr. McIntosh: Not only that, I think if we get some, not too many, but we get some where there’s not a lot of thought put into it before they come before us. Well I can think of a couple off the top of my head where I’ve said why are they even here, in my own mind.

Mr. Fruehstorfer: It doesn’t mean they didn’t put a lot of thought into it and a lot of work first.

Mr. McIntosh: Well let’s say quality thought. All I’m saying is it might give a developer a little bit more pause to think about what they’re bringing before us instead of a crap shoot and saying well, geez, it didn’t cost me anything. So if I put it in and they reject it, well so what. But now all of a sudden there is money at stake if they do and maybe they’ll bring something more reasonable than they might otherwise do. So I support it. I don’t think that that’s any reason...

Mr. Silverman: I have a technical question.

Mr. Coleman: Yes, I think Mr. Silverman’s comment about development plans being rushed in, I don’t know that we necessarily face that same issue here. I know at the County, in my previous employment, we had a relatively large development planning team and fees resulted in a million dollar difference for one project. But it was a 650 acre project. The biggest project we’re looking at here is a handful of acres, so there’s really a ceiling on what kind of impact we could do.

Mr. Stozek: Yes, I was just going to make a comment. When these plans are brought forward, the effort is expended by the City so, you know, if they don’t pay for it, the taxpayers are paying for it. They’re subsidizing the developers. It gives them the impetus to make sure they’re coming with a good proposal and, you know, quality thought.

Mr. Firestone: Not to mention they’re getting our time for free.

Ms. Feeney Roser: That’s true.
Mr. McIntosh: Wait a minute, we could add a fee for that.

Ms. Feeney Roser: I think we should add a beer garden fee so that after these meetings . . .

Mr. McIntosh: Where’s that Mr. Steeves guy?

Mr. Silverman: I’ve got a technical question.

Mr. Cronin: Does that suggest that once the higher fee structure goes into effect, we might get a tax reduction for the citizens of Newark?

Mr. McIntosh: Well don’t go that far.

Mr. Silverman: On a more direct note, I’ve got a question and point of information. I like this paper that was prepared.

Mr. Cronin: Except for the size of the print.

Ms. Feeney Roser: Which one is that one? The first one?

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: I can’t see, it’s too small. Oh, this one. Okay.

Mr. Fruehstorfer: And there are lots of hidden columns. It’s a much bigger file.

Mr. Silverman: I like this table. I’d like to know whether it’s going to be an attachment and be a permanent part, permanently updated, and be available as part of this recommendation, not just an exhibit for our convenience. I think it should be part of the proposal. Rather than saying Table 1, I believe it should have a title that can be referred to and given an appendix identifier, the table as found in Appendix C or D or whatever the next one is.

Mr. Fruehstorfer: I think in our next report we will definitely include it. This was put together now for budget reasons.

Ms. Feeney Roser: Yes, but I think you’re referring of actually putting this in Code.

Mr. Silverman: Yes. Making it a part of the Code.

Ms. Feeney Roser: No.

Mr. Fruehstorfer: No, it needs to be part of our recommendation to Council as justification for the fees but . . .

Mr. Silverman: Okay.

Mr. Fruehstorfer: And it definitely will be . . . it made this report much more simple, being able to just attach that information. And that’s what I think we’ll do for Council.

Ms. Feeney Roser: And if I could review a plan in less time, I don’t want to be required to spend four hours on something that I’ve done in two. Do you know what I mean? That’s what concerns me about it.

Mr. Silverman: Okay. Then I’m ready to call the question.

Mr. McIntosh: Okay, call it then.
Mr. Firestone: All those in favor of the fee schedule with the changes that we discussed and were included in the motion, signify by saying Aye. Opposed? Motion carries.

Mr. Fruehstorfer: Thank you.

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


VOTE: 5-0

AYE: CRONIN, FIRESTONE, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

6. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND SUBDIVISION REGULATIONS OF THE CITY OF NEWARK AS THEY RELATE TO UPDATING REFERENCES TO THE FORMER POSITION OF BUILDING INSPECTOR AND CLARIFYING CONDITIONS FOR SUBDIVISION APPROVAL.

Mr. Firestone: That gets us to Item 6. I’m going to suggest that we defer consideration until the next meeting for Item 6 given the lateness of the hour and that it is not time-sensitive.

Ms. Feeney Roser: It works for me.

Mr. McIntosh: Do you need a motion?

Ms. Feeney Roser: Yes.

Mr. McIntosh: I would move that we accept that whatever you just said.

Mr. Silverman: Second.

Mr. Firestone: Any discussion? All in favor, signify by saying Aye. Opposed? Motion carries.

MOTION BY MCINTOSH, SECONDED BY SILVERMAN THAT THE PLANNING COMMISSION DEFER REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND SUBDIVISION REGULATIONS OF THE CITY OF NEWARK AS THEY RELATE TO UPDATING REFERENCES TO THE FORMER POSITION OF BUILDING INSPECTOR AND CLARIFYING CONDITIONS FOR SUBDIVISION APPROVAL UNTIL THE NEXT PLANNING COMMISSION MEETING.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

7. NEW BUSINESS.
Mr. Firestone: The last item is new business. Is there any new business? If not, I would entertain a motion to adjourn.

Mr. McIntosh: I’ll make that motion.

Mr. Firestone: Is there a second?

Mr. Stozek: Second.

Mr. Firestone: All in favor, signify by saying Aye. Opposed? Meeting adjourned.

MOTION BY MCINTOSH, SECONDED BY STOZEK, THAT THE PLANNING COMMISSION MEETING BE ADJOURNED.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: HURD, DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 9:51 p.m.

Respectfully submitted,

 Alan Silverman
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary