

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 8, 2021

Those present at 5:45 p.m.:

Presiding: Mayor Jerry Clifton
Deputy Mayor, James Horning, District 1
District 2, Sharon Hughes
District 3, Jay Bancroft (arrived: 6:02 p.m.)
District 4, Chris Hamilton
District 5, Jason Lawhorn
District 6, Travis McDermott

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Finance Director David Del Grande
Planning and Development Director Mary Ellen Gray

Chief Communications Officer Jayme Gravell
Chief Purchasing & Personnel Officer Jeff Martindale
Chief Human Resources Officer Devan Hardin
Deputy Chief Kevin Feeney
Deputy Director Public Works & Water Resources Ethan Robinson
Finance Director David Del Grande
Parking Supervisor Court Mulvanity
Planner II Tom Fruehstorfer

1. Mr. Clifton called the meeting to order at 5:45 p.m.

2. **EXECUTIVE SESSION**

A. Executive Session pursuant to 29 Del. C. §10004 (b) (4) and (6) for the purpose of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body and the discussion of the content of documents, excluded from the definition of “public record” in §10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: THAT COUNCIL ADD TO THE AGENDA AND ENTER INTO EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (4) AND (6) FOR THE PURPOSE OF STRATEGY SESSIONS, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO COLLECTIVE BARGAINING OR PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE BARGAINING OR LITIGATION POSITION OF THE PUBLIC BODY AND THE DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN §10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE 6 TO 0.

Aye – Clifton, Horning, Hughes, Hamilton, Lawhorn, McDermott.

Nay – 0.

Absent - Bancroft

3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:00 p.m.

Mr. Clifton announced no further action was necessary.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE

Mr. Clifton asked for a moment of silence and the Pledge of Allegiance.

Mr. Clifton asked for any changes to the agenda.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO POSTPONE AGENDA ITEM 8A FROM THE AGENDA TO THE JUNE 14, 2021 COUNCIL MEETING.

MOTION PASSED. VOTE 7 TO 0.

Aye – Clifton, Horning, Hughes, Bancroft, Hamilton, Lawhorn, McDermott.

Nay – 0.

Mr. Clifton explained the procedures for the GoToMeeting Platform. He stated that at the beginning of each item, he would call on the related staff member to present and, once the presentation was complete, he would call on each Councilmember in order of district number to offer their comments. If a Councilmember had additional comments to add later, they should signal Ms. Bensley through the GoToMeeting chat function. Members of the public wishing to comment should also signal Ms. Bensley through the chat function with their name, district or address, and the agenda item on which they would like to comment. He noted that for participants logged in by phone, names would only appear as Caller One, Caller Two, et cetera, so it was imperative that the participants inform Council of their identities. He stated that all lines would be muted until individuals were called to speak. All speakers were required to identify themselves prior to speaking and, in compliance with the executive order on teleconference meetings by Governor Carney, votes would be taken by roll call. He continued that it may be necessary to adjust the guidelines if any issues arose during the meeting. He reminded that all lines should be muted until called upon to speak.

5. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None

6. 1-B. UNIVERSITY

(1) Administration (5 minutes per speaker) (10 minutes):

5:42

Caitlin Olsen, UD Administration, shared that Spring Move-in would be underway between February 10th and 14th with drive-by key pick up at the Field House to decrease chances of congregating. She explained UD would hold virtual 1743 Days for opening weekend activities where students could choose to participate in virtual groups. She reminded that many students could be new to the City and campus and asked Council to reach out with questions and concerns. She received questions regarding parking and shared that students were able to purchase one-day, weekend, multi-day, semester, and year-long passes for campus. She explained that if she were a student living on Main Street, she would purchase a pass on new lot, likely the University Courtyard Lot. She noted that students who purchased the gray lot could move their cars to the Pearson Lot (near Academy and Aetna Firehouse) on nights and weekends. She reminded student parking was available at the Laird Campus, the Field House, and various other places. She did not anticipate a sell-out given the number of students on campus and added that students were bringing bicycles to campus because of the limited bus schedule. She reiterated that any issues be brought to her attention so students could be contacted through Student Life.

The Mayor opened the table to Council comments.

Mr. Horning asked if UD was following the same precautions as the last move in. Ms. Olsen confirmed and added that the Office of Student Conduct would be stricter regarding guests and socializing in the dorm halls given the greater number of students on campus. She noted there were fewer students in the fall, but word was spreading quickly about the consequences for breaking guest rules or having too many people in dorm rooms. She reiterated that move in protocols were the same as the fall and would ensure that students were spread out. Mr. Horning asked how many students would be on campus and Ms. Olsen said she would investigate but said that UD was trying to have one student per room or two students per apartment. She noted that UD typically had 7,400 students in the dorms, and she believed the spring semester would have around 3,800. She promised to provide a more accurate number and said

she was unaware of the number off-campus students but could not imagine that it would differ from the fall. Mr. Horning last heard the annual lease was close to off-campus capacity and thanked Ms. Olsen.

Mr. Hamilton asked for updates on spring sports attendance and Ms. Olsen said that any attendance would most likely be restricted to family. She said the decision was based on the rates in the area and the President's comfort level. She assumed that UD administration would begin the season without an audience and then assess the situation.

7. **1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes):** None

8. **1-C. CITY MANAGER (10 minutes):**

14:28

Mr. Coleman noted the two recent snow events and said that there was a potential for another shortly. Staff was working securing more information on when the City could procure vaccinations for critical infrastructure employees. He would issue an administrative report covering the current and last week.

9. **1-D. COUNCIL MEMBERS (5 minutes):**

15:08

Mr. Hamilton:

- Congratulated Wendy Creecy as the new District 4 Councilperson
- Met with Ms. Creecy in her home and the discussion focused on Newark's quality of life
- Thought Ms. Creecy would be an excellent District 4 Councilperson
- Asked Ms. Bensley if 2C needed an amendment to remove District 4 as a voting place and Ms. Bensley replied no and informed staff would not publicize the unchallenged districts
- Asked Mr. Coleman for an update on the nuisance ordinance. Mr. Coleman informed that Solicitor Bilodeau was crafting a draft ordinance. Mr. Bilodeau confirmed and explained staff was considering circulating the draft ordinance and would have a discussion with Council prior to first and second readings to discern any substantive changes. Mr. Coleman interjected that the draft ordinance discussion was scheduled on March 1, 2021.
- Asked for an update on parking meters at the reservoir and the new Rodney Park
- Noted the new Rodney Park could be an issue if students were able to park in the lot for free. Mr. Coleman replied that Director Spadafino met with Parking Manager Howard and the Parking Team to discuss a plan. He expected to have more information shortly.
- Asked for the current practice on snowy sidewalks
- Estimated 80% of the rental homes did not shovel the sidewalks and residents were walking on the streets
- Asked if City staff was actively patrolling or relying on reports for non-compliance
- Wanted to be more familiar with the process. Mr. Coleman said he would provide Council with a written memo and confirmed City staff was performing sidewalk enforcement but began in areas with the most pedestrians or that were heavily trafficked. He confirmed there was a notice requirement for fines: residents had 24 hours to clear the walks after a storm, a warning would then be issued granting another 24 hours, and then staff would issue a citation and a fine. He noted the citation could be appealed at the Alderman's Court. He indicated there was a Code provision which allowed staff to clear the sidewalk and then bill the resident for the cost plus 50%. Staff had been operating as such over the last few years because it was the fastest solution but admitted it took a long time as personnel was limited. He said that staff first dealt with Tier 1 and 2 streets and then acted on a complaint basis outside of the areas while the contractors were in town.
- Was interested in knowing if any non-compliant properties were fined
- Asked if Council could remove the warning period
- Asked if it were accurate that residents would be fined 72 hours after a storm. Mr. Coleman corrected it was 48 hours and informed that staff had addressed the properties Mr. Hamilton reported. He wanted to investigate further and created a full memo.

Dr. Bancroft:

- Noted several large development projects on the horizon
- Viewed parking waivers as a way for Council to act
- Stated the City's development was consistent with the Planners' understanding of the growth occurring in the City and increased revenue needs
- Acknowledged Council needed to determine if the mitigation steps were consistent with Code and plans were reasonable
- Asked Ms. Bensley if Councilmembers should come forward with any candidates for the Diversity Committee. Ms. Bensley reminded that there was no Diversity Committee because staff received direction

to return with an ordinance for Council consideration to codify and begin the Committee. She informed staff was collecting names from interested individuals and would retain applications but clarified that no one could be scheduled for appointment until the Committee was formed by ordinance.

Ms. Hughes:

- Thanked Chief Tiernan and NPD for collaborating with the DSP for addressing speeding and dangerous driving on Capitol Trail
- Thanked Josh Shannon of the Newark Post for the article
- Noted that the collaboration issued a significant number of citations and DUIs
- Added that drugs were confiscated, and arrests were made
- Was pleased with the prompt action taken

Mr. Clifton:

- Referred to Mr. Hamilton's point on sidewalks
- Thought the City's current procedure could be viewed as a game
- Wanted to address snowy sidewalks because it was the City's intent to be a walkable, safe community
- Shared that Aetna Firefighter, Mike Marine, passed
- Mr. Marine served as a firefighter and paramedic

10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes): None

31:37

Representative Baumbach thanked Council and staff for their efforts during the pandemic and was delighted with everyone's responsiveness. He often heard from frustrated residents regarding vaccinations, but he reminded that the administration was doing its best. He acknowledged and appreciated staff and Council and also appreciated the understanding of City residents. He emphasized that he and Senator Sokola were pleased to help in any way and encouraged City residents to reach out. He added that Representative Kowalko also served much of the City and reminded that the elected officials worked for the residents. He pointed that the officials worked with the City on the upcoming election to make sure the emergency proclamation modification could address the election, worked to make sure that second doses for the Police Department and Emergency Services were available. He reiterated that elected officials were tasked with helping individuals and municipalities to operate better.

Mr. Clifton shared that he and Representative Baumbach discussed a movement called Rank the Vote, a different way of tabulating the outcome of an election. He wanted to have a more detailed discussion with Council and asked that residents and Council learn more at www.rankthevotede.org. He thanked Representative Baumbach.

11. 2. APPROVAL OF CONSENT AGENDA: (1 minute)

- A.** Approval of Council Meeting Minutes – January 25, 2021
- B.** Receipt of Planning Commission Minutes – December 1, 2020
- C.** Approval of Polling Places for the April 13, 2021 City Council Election
- D.** Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Leasing of Undercover Vehicles

35:32

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

Aye – McDermott, Lawhorn, Hamilton, Bancroft, Hughes, Horning, Clifton.

Nay – 0.

12. 3. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS: None

13. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

14. 5. SPECIAL DEPARTMENT REPORTS:

- A.** FY2020 Budget Amendment for the Payment of COVID-related State of Emergency Accruals to AFSCME 3919 Employees – City Manager/Finance Director (10 minutes)

36:41

Mr. Del Grande stated that at the January 11, 2021 Council meeting, Council approved the Memorandum of Understanding (MOU) between the City and AFSCME Local 3919. As such, staff presented a budget amendment in the amount of \$314,769 to be incorporated in the 2020 Approved Operating Budget. He noted that funding for the amendment would come from the City’s reserve account and, if it determined through the year-end process that all of the additional funding was not required, the funds would revert back to the City’s reserves.

The Mayor opened the table to Council comments.

Mr. McDermott, Mr. Lawhorn, Mr. Hamilton, Dr. Bancroft, and Ms. Hughes had no questions.

Mr. Horning thanked Local 3919 to coming to the table in good faith.

Mr. Clifton echoed Mr. Horning’s comments.

There was no public comment and the Mayor returned the discussion to the table.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE FISCAL YEAR 2020 BUDGET AMENDMENT FOR THE PAYMENT OF COVID-RELATED STATE OF EMERGENCY ACCRUED TIME FOR AFSCME 3919 EMPLOYEES.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Horning, Hughes, Bancroft, Hamilton, Lawhorn, McDermott.

Nay – 0.

- 15. 6. **FINANCIAL STATEMENT:** None
- 16. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None
- 17. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. *Postponed until June 14, 2021*
- 18. 8-B. **BILL 21-03 – AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY IMPLEMENTING COVID-19 SAFETY MEASURES FOR THE 2021 CITY ELECTIONS (10 MINUTES)**

40:01

Ms. Bensley read the ordinance into the record.

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: FOR SECOND READING AND PUBLIC HEARING.

Ms. Bensley informed the bill was the follow-up ordinance on Council direction to staff on October 19, 2020, to bring a proposed ordinance related to COVID-19 safety measures back to Council to be considered not later than February 8th (the filing deadline) for the 2021 election. The memo proposed that the safety measures included in the SOE be codified into City Code to prevent any issues if the SOE were to be lifted. The bill provided for social distancing restrictions and mask requirements in the polling places as currently outlined in the SOE declaration. She continued that exemptions to the social distancing requirements for necessary interactions between poll workers and voters were included and said that the bill codified the practice of providing the option of an absentee ballot for voters who refused to wear masks to make sure they were not disenfranchised from participating in the election. She admitted there were no incidents during the 2020 election with voters refusing to wear masks, but staff wanted to ensure the possibility was addressed to provide clarity for the voters and poll workers.

The Mayor opened the table to Council comments.

There were no comments from Council.

There were no public comments and the Mayor returned the discussion to the table.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE BILL 21-03 – AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY IMPLEMENTING COVID-19 SAFETY MEASURES FOR THE 2021 CITY ELECTIONS.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Horning, Hughes, Bancroft, Hamilton, Lawhorn, McDermott.
Nay – 0.

(ORDINANCE 21-05)

19. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:

- A.** Request of George Danneman on Behalf of Danneman & Danneman LLC for the Major Subdivision with Site Plan Approval of 0.6518 Acres in Order to Demolish the Existing Structure at 132 East Main Street and Construct a Five-Story Mixed Use Building Including 5,323 Square Feet of Retail Space Fronting Main Street and 2,000 Square Feet of Commercial Office/Retail Space in the Rear of the Building Abutting the Parking Lot on the First Floor and 28 Apartment Units on the Upper Floors at the Property Located at 132-136 East Main Street ***(Agreement and Resolution Attached) (See 9-B and 9-C)*** (90 minutes for 9-A, 9-B and 9-C combined)

44:00

Ms. Bensley instructed that items A, B, and C would be considered together and read the recommendations into the record.

Mr. Clifton repeated that items 9A, 9B, and 9C would be considered simultaneously. He informed that 9C would be the first vote cast.

Ms. Gray would first present the major subdivision and special use permits and then the parking waiver item. She reiterated the applicant sought a major subdivision with Site Plan Approval (SPA), special use permit and a parking waiver. At the December 1, 2020 Planning Commission meeting, the applicant requested approval of the plans to replace the structure at 132 East Main Street with a five-story mixed-use building, including 4,400 square feet of retail space and 33 apartment units while leaving the existing structure at 136 East Main Street unchanged. Questions arose during the discussion regarding allowing apartments on the ground floor in the BB zoning district and the interpretation of allowable apartment unit density when utilizing the Site Plan Approval Process. The application was tabled by the Planning Commission with a 5-0 vote to allow the City Solicitor time to investigate the questions. The City Solicitor ruled that through the Site Plan Approval Process, a request for ground floor apartments in the BB zoning district was permitted as was an increased density limited to 15%. She noted Mr. Bilodeau's memo was included in the packet.

Ms. Gray explained the applicants revised the project based on discussions at the December Commission and the City Solicitor's ruling, and presented the revisions at the January 5, 2021 Commission meeting with the following changes:

- Proposed first floor apartments were removed and replaced primarily by commercial office/retail space
- Apartments on floors two to five would be 15 two-bedroom apartments, nine four-bedroom apartments, and four six-bedroom apartments.
- Parking waiver was increased from 66 to 67 parking spaces to reflect the change in parking requirements

Ms. Gray noted the previous version of the plan included a hotel and parking garage was reviewed by the Design Committee on February 21, 2019, prior to suspending the meetings. While the plan was revised to delete the hotel and parking garage, the basic design facing Main Street essentially remained intact. The Newark Design Committee report was attached as Exhibit L in the Planning and Development Department (Department) staff report and had a favorable recommendation. She informed the Design Committee was not holding meetings and were not available to review the revised plan.

Following the Subdivision Advisory Committee review of the proposal as presented to the Planning Commission on December 1, subsequent Department staff review, and the proposed revisions as presented to the Planning Commission on January 5, the Department suggested the Commission recommend approval of the major subdivision with SPA, special use permit, and parking waiver, with a

series of Subdivision Advisory Committee conditions. On January 5, the Commission voted 5-0 to recommend that Council approve the major subdivision with Site Plan Approval and special use permit with revised plan dated December 15, 2020. She added the Commission also voted 5-0 to approve the 67-space parking waiver with the condition that the parking lease agreement was for 99 years.

Ms. Gray next presented the parking waiver memo and stated approval of a parking waiver was under the purview of the Planning Commission per City Code. Code also stated that the Commission could either approve, approve with conditions, or disapprove the application. Staff noted that in reviewing parking waiver applications, the Commission had further considerations articulated in the memo. She added that Code also indicated that within 45 days, Council could also review, modify, or deny the Commission's approval, disapproval, or approval with conditions upon recommendation of a Councilmember, Planning Director, or the City Manager. Per the co-provision, Mr. Clifton requested Council review the Commission's parking waiver decision.

Ms. Gray continued that the applicant requested a parking waiver of 67 spaces and the Department concurred with the applicant's approach of decoupling parking, discouraging onsite parking, and discouraging the use of vehicles in favor of alternate means of transit in the downtown area. Furthermore, the approach was encompassed in the Parking Subcommittee's recommendations adopted by Council on March 26, 2019. Staff recommended approval of the parking waiver. She repeated that on January 5, the Commission voted 5-0 to approve the parking waiver with the condition that the parking lease agreement was for 99 years.

Mr. Clifton introduced the attorney of record, John Tracey. Mr. Tracey introduced:

- Property owner, George Danneman, whose family owned the location and the neighboring property for decades
- Project Engineer - Julia Pellegrini - The PELSA Company
- Project Architect - Kevin Wilson – Architectural Alliance
- Craig Johnson – North Star Construction Management

Mr. Tracey stated that the design of the project was a collaborative process with the City and its departments that stretched over several years. He reiterated Ms. Gray's points that the original project was for a 10-story building that incorporated retail, apartments, a hotel, and a parking garage that would have covered much of Lot 4 and would have been operated or owned in partnership with the City. He reminded that the design was favorably vetted by the Downtown Newark Partnership and pointed that design changes from the meeting remained with the project through its revisions which was now a more traditional downtown, mixed use of apartments coupled with first floor retail. He listed the incorporated design changes, including the mansard roof added to the fourth floor of the Main Street façade which reduced the perceived scale, brick veneer, reduction of the building scale to accommodate uninterrupted vehicular access at the back of the building for both sides of Lot 4. He pointed that an earlier plan called for vehicular access under the building with an elevated second story, but some City departments were not in favor of the plan. The applicant readjusted the front stair tower and relocated it to have direct corridor access to Main Street which created the ability for a remote fire alarm panel for emergency personnel access. The applicant also modified the upper floors construction type from Type 3 to Type 2 and created horizontal separation between the upper floors which were reviewed by the Aetna Fire Company. He stated the Aetna Fire Company supported the fire safety features incorporated into the building. He reminded the plans were vetted over two Planning Commission hearings and tabled for the City Solicitor to review. The plans were returned and approved after the Solicitor issued an opinion and the applicant revised the design. The revisions included the elimination of the first-floor apartment units and a reduction in density. The revised plans received unanimous support from the Planning Commission and the Department.

Mr. Tracey explained the location was the former home of Margherita Pizza and was the current home of Chipotle and Playa Bowls. He presented several other larger projects that were being pursued or had been constructed and approved within the City and noted that three projects were larger than the proposal: the Lang Project, Stone Balloon and 141 East Main. He emphasized that the area was commercial and was the central business district but also had many mixed-use projects. He continued that the property zone, BB, and its Comprehensive Plan designation permitted the use without the need for any change. As such, the applicant felt that the use would fit comfortably within the variety of uses in the proximity and with the desires of directing the targeted population into the downtown business district.

Mr. Tracey reiterated the current visual status of the property with retail spaces (Tasty Wok, Playa Bowls, and the former Margherita's Pizza) and second story apartments and said the property as viewed from Center Street was almost entirely paved. He then presented a slide depicting the uses from a site

plan perspective and the parking configuration behind the building. He emphasized that the parcel's lot lines extended through the parking lot which was partially owned by Danneman & Danneman. He explained the City was leasing the parking spaces on the Danneman lot for the sum of \$1 per year. He noted that there were available parking spaces in the area and the lot served as a throughway for visitors traversing Lot 4 between the eastern and western sides of the property.

Mr. Tracey explained that the proposal would include replacing the existing two-story mixed-use buildings housing the previously mentioned restaurants with a five-story mixed use building that wrapped to the rear of the Chipotle restaurant, which would remain. He explained the parking lot to the rear of the applicant's property and the adjacent property to the east would be redesigned to accommodate changes to ensure that the traffic could adequately flow through Lot 4 to allow the continual use of the parking area as a City parking lot. The applicant incorporated handicapped spaces to the rear of the building and would add an electric vehicle charging space. The proposal reduced total number of commercial storefronts in the building facing Main Street from four to three but would have commercial space to the rear of the building. Mr. Tracey presented a slide illustrating the layout. He explained the fourth commercial space would be to the rear of the Chipotle building and was slated for higher intensity uses, like restaurants, but would more likely be destination retail. The fourth commercial space replaced the originally planned first floor apartments. He pointed out that the residential units could be accessed from Main Street as well as from the parking lot to the side and informed that areas behind the proposed commercial property reflected a variety of amenity and mechanical spaces to access the residential portion of the building. He continued there would be a combination of residential amenities such as study rooms and an office, storage, a fitness center, bicycle storage spaces, and there would also be storage facilities on each of the above floors for bicycles. The applicant planned to have landscaping and would work with the City for an approved landscape plan.

Mr. Tracey then showed a slide comparing the proposed plan with the Newark Opera House, diagonally across the street from the property. He noted that the architectural intent of the structure with blending brick was the primary focus for Main Street while incorporating the stepped back roof feature. He explained the building materials were revised over several years through consultation with the City and architects to determine an appropriate Main Street "feel". He then displayed the building from several vantage points and confirmed that, in addition to landscaping along the back of the parking lot, the applicant would install a solid fence along the property lines.

Mr. Tracey repeated that the proposal was endorsed by the Planning Commission and the applicant sought Site Plan Approval with three requested deviations, which were consistent with other projects. He noted that the front setback deviation was reduced so the variance request was now 6 feet instead of 7.9 feet. He reiterated the changes throughout the process and stated the Planning Commission supported the designed after the applicant revised the plans in accordance with the determinations of the City Solicitor. He repeated that the applicant concentrated heavily on the architecture and had been working on the plans since mid-2019. He added that the applicant was subject to the requirements in City Code to meet or exceed the LEED certified level and add stormwater improvements in quantity and quality through a subsurface system, an EV charging station, and outfit the building and roof for the inclusion of solar panels for future installation. He informed that the Planning Commission Chairman discussed the new City Energy Code and noted the project was not subject to the Code because it began prior to the adoption. He shared that the applicant continued to evaluate the Code in light of the project to attempt compliance but fully met and exceeded the requirements that applied to the project.

Mr. Tracey argued that the project was consistent with the Comprehensive Plan and would not have any adverse impacts on surrounding properties such as it was worthy of the Site Plan Approval and Special Use Permit Approval recommended by the Planning Commission. He stated that the applicant requested and received a parking waiver from the Planning Commission, with the Department's favorable recommendation, and was consistent with the expressed goals of the City for parking and development along the Main Street corridor dating to 1999 with the building immediately to the west. He emphasized the students would be located downtown in high-quality buildings with decoupled parking so the property's residents would have no available parking in the downtown district and would be able to walk. He referred to Ms. Olsen's earlier comments on student parking and stated the City website had excellent resources on City and University parking availability. He estimated 2,100 spaces between four lots that included two garages and at least one surface lot that were available for student housing. He assumed students were the target audience for the building so it made sense that their cars could be parked at the various University parking lots around the City. He reiterated the discussion was part of the 1999 hearings for the property to the west of the property address, was discussed in the hearings for Kate's Place, and was also substantially discussed and approved for adoption during the subcommittee parking study. He noted the City wanted to establish a culture of walkability and shared that the applicant previously paid a waiver fee for the proposed and neighboring sites and leased space to the City at no cost. He explained

the applicant was following historical requests submitted by neighboring properties and requested the waiver in exchange for granting the City the remaining parking spaces for 99 years at no cost as well as adding, recording, and keeping in place the cross access easement to allow the ability to traverse the parking lot on all sides. He reiterated the building had university-focused uses throughout, that floors 2 through 5 were targeted for students, and the first floor were businesses that were almost entirely dependent on UD and its clientele.

The Mayor opened the table to questions from Council.

Mr. McDermott thanked Mr. Tracey for the presentation. He appreciated the aesthetics of the building and asked if the comparison in size to the Stone Balloon, the Lang Project, and 141 East Main Street was height or overall size. Mr. Tracey replied that he focused on height but believed the proposed building was not larger than the other buildings. Mr. McDermott asked if the buildings were the same or relatively the same height. Mr. Tracey confirmed the buildings were the same size and the proposed building could even be smaller. Mr. McDermott asked if the special use permit would allow the developer to increase from 24 apartments to 28. Ms. Gray replied that the special use permit was to allow apartments and the density increase fell under the SPA. Mr. McDermott asked if other projects received the approval and Mr. Tracey replied that many projects in City received Site Plan Approval because any apartment project in the BB district required a special use permit. Mr. McDermott asked if the City was allowing a higher density and if it was a routine action. Ms. Gray replied that it was the first project, to her recollection, that included a density waiver in the BB zone but noted there were density waivers granted in Site Plan Approval in the RM zone.

Mr. McDermott asked for the net loss of parking spots for the City. Mr. Tracey replied approximately 20 spaces but would confirm and noted the spaces were currently on the applicant's property. Mr. McDermott asked if 6 spots would remain and Mr. Tracey corrected that 14 spots would remain. Mr. McDermott asked what recourse the City had to access the lot behind Kate's Place if the parking waiver failed. Mr. Coleman explained that the City had an entrance to Lot 4, next to Kate's Place, that was 11 or 12 feet wide so if the City lost access across to the back, it would need to secure a second entrance to Lot 4 East that would also need to be 11 or 12 feet wide. He explained the width was the bare minimum and shared that City staff needed to be able to access the trash compactor, so it was critical that the City maintained access to the lot. Mr. McDermott assumed the City would have to purchase a separate property as an alternative and Mr. Coleman confirmed. Mr. McDermott asked if the alternative property would be off of Chapel Street and Mr. Coleman replied it would be off of Choate Street. Mr. McDermott assumed the purchase would be costly and Mr. Coleman confirmed because the property would most likely be a current student rental. Mr. McDermott asked how many yearly rental parking spots the City had, and Mr. Coleman replied that the City had 80 yearly rentals with permits and they were in Lot 5. He continued that there were a few yearly permits where the City was obligated to supply a permit as part of a lease agreement and noted that Lot 6 was the only lot without permits but Lot 5 was entirely full of permits. Mr. McDermott shared that his constituent responses were roughly 50/50 but he did not have any major concerns for the property and thought it was beneficial for the City to maintain access to the parking area. He felt the parking waiver was in line with the City's desire to have fewer vehicles downtown, but he questioned whether students opted to leave vehicles at home because he noticed many out-of-state plates throughout the City. He asked if there would be enough parking spots if the City continued down the path with other development projects and wondered what the City needed to do to increase its own number of rentable parking spots. He was interested in public and Council comments.

Mr. Tracey shared that the applicant had 30 parking spots on his property and 14 would remain so 16 would be lost. He assumed the City did not grant parking passes to students for downtown lots and a student who used a lot to visit a business paid the same as everyone else. He continued that the City's website highlighted available parking on University lots for student use. He referred to a 1999 hearing where Mr. Lang argued he had other properties without parking and the buildings remained in high demand even without the ability of on-site parking. Mr. McDermott agreed and shared that he tended to use Uber more often than driving into town. He reiterated that he understood there were many out-of-state vehicles and he wanted to make sure that there was available parking somewhere in the City.

Mr. Hamilton noted that the business model was student-focused and did not anticipate parking. He asked if Mr. Tracey could guarantee what businesses would occupy the retail areas. Mr. Tracey replied that Chipotle was under a lease and thought the other two businesses also had leases. He admitted the pandemic impacted the businesses, but they had small indoor dining areas and focused on take-out. He continued that he was unsure what business would occupy the backend of the building but assumed it would not be a high-volume commercial business because it would not have visibility from Main Street. Mr. Hamilton noted that Mr. Tracey was unable to provide a guarantee and pointed that leases ran out and businesses went under and he witnessed many interesting parking waiver requests. He emphasized

that eliminating parking spots on Main Street was a constant issue and was hopeful to have better public transportation in the future. He reiterated the issue of inadequate parking and argued that interpretation of the ordinances should be left to Council and not the Planning Department. He noted the application called for eliminating downtown parking spots. He claimed to have been vocal about eliminating parking spots in residential areas directly next to UD where students could walk to class and leave vehicles at the Field House. He argued there were many long-term parking options in the City but there were many times where the City's lots were full, which challenged the businesses who indicated a need for more parking spots. He thought if parking spots continued to be eliminated, the City would have to spend money to build a garage. He noted that in order to keep downtown viable, the City needed every parking space available. He thought it was incumbent upon a business to include in their business plan how to accommodate their customers and not have someone else do so. He was challenged with the parking waiver as presented and did not think it was a smart move to eliminate parking spots based on the feedback he received over the years. He appreciated Mr. Danneman's actions regarding previous leases and noted that many parking leases had issues. He pointed out that some developers were successful in creating parking business so he was unsure why the City should grant parking waivers downtown because the City wanted more visitors to the downtown area. He appreciated that the City could potentially be forced to purchase additional spots or land but was unsure if it was the City's job. He looked forward to public comments.

Mr. McDermott asked if the parking spots that would be affected by the waiver were directly related to the apartments and not the businesses. Mr. Tracey replied the waiver encompassed the overall parking for the building and part of the total unit count in the commercial space was not changing from the current count, it was being realigned but was not changing. He explained the parking waiver was based on the number of seats and square footages in the areas so even if the use changed, the applicant would have to return to Council if the use triggered additional needs for a parking demand. He admitted the leases could change but said the property was bound by the representations in terms of seats and employees that were made as part of the application. He added that the applicant was conservative in his estimate and took a more conservative approach with a higher traffic generating use with the idea that it was easier to plan for a bigger use and have a smaller use than vice versa.

Mr. Hamilton asked Mr. Bilodeau about a property on North College Avenue. He explained a restaurant went through Council and then decided to have more tables and seat more people. He pointed out that the request did not go through Council but went through the Board of Adjustments. Mr. Bilodeau was unaware that the scenario had proceeded through the Board of Adjustment and thought it was before his time with the City. He confirmed if the applicant needed an adjustment to a parking waiver, he would have to come before Council or Planning Commission but wanted to further investigate Code. Mr. Coleman interjected and thought 62 North College Avenue sought a variance from the parking requirement through the Board of Adjustment but could not recall specifics.

Mr. Lawhorn generally supported the Parking Committee's suggestion of reducing or eliminating the parking requirements attached to the building in order to promote a walkable and bikeable community and decrease traffic. He agreed that UD had available parking, but he viewed parking as an opportunity. He admitted there were times when parking was an issue, but it generally meant that businesses were benefitting and was a separate topic. He agreed with Mr. McDermott that the discussion was ongoing and noted the Parking Committee made many recommendations that were forthcoming. He argued that parking in the City generated millions in revenue and acknowledged that some agreements had weaknesses but thought the project was independent of the issues and the idea of a parking waiver had positive aspects. He recognized the apartment owner assumed the risk of not having parking and agreed that some students brought cars but only because there were available spots. He thought that limited parking would dissuade students from bringing their vehicles to the City. He argued that some students had jobs and there were those that would bring cars no matter what. He spoke to many students who brought their cars to Newark and let them sit.

Mr. Lawhorn believed the project pushed the guidelines for height on Main Street. He understood there were other buildings of the same height but thought the project was reaching for the limit of what the City and residents desired. He thought if the parking waiver were eliminated then the applicant would be encouraged to redesign to incorporate a garage which could turn the five-story building into a seven-story building which was an issue for Mr. Lawhorn and his constituents. He tended towards supporting the parking waiver.

Mr. Lawhorn addressed the front clearance and acknowledged the applicants had 13.5 feet and sought a variance. He asked for the clearance of the adjacent buildings and if it included sidewalk width out front. Mr. Tracey replied the clearance was from the property line and said the original building, at its biggest point, was 8.83 feet closer to the property line than the proposal and included the overhang which

was out 9 feet further than the proposal. Mr. Lawhorn asked which property line and Mr. Tracey replied off of Main Street. Mr. Lawhorn asked if the proposal would increase the width of the sidewalk from its current measurement and Mr. Tracey confirmed the building would be pushed back from Main Street and the right of way. Mr. Lawhorn shared it was Council's desire for broader sidewalks. Mr. Tracey said that the proposed building would almost align with Walgreen's and might be a foot closer to Main Street. He pointed that the building would be in line with Panera and other buildings to the east. He explained the blue line in the presentation represented the projections of the existing building.

Mr. Lawhorn referred to density and reminded that Mr. Bilodeau opined on the concern around giving density bonuses through SAP and asked if the City was on good ground with the concern. Mr. Bilodeau confirmed that the issue was raised at the December meeting, so he reviewed the Code provision and issued his opinion that it was permissible to have a density bonus in the BB district for up to 15% more apartment units. Mr. Lawhorn noted the density was reduced from 33 to 28 units. He argued that the density decreased per the number of units, but the number of bedrooms stayed the same which related to the City's parking requirements. He believed that it would be clearer to count density by bedrooms and noted it was possible for developers to manipulate the situation. Mr. Tracey believed the presented proposal had fewer bedrooms than the original proposal and clarified that the applicant met with the Planning Department to review the plans which always showed a density bonus using the Site Plan Approval and was never raised as an issue. He indicated that at the first meeting with the Planning Commission, the Planning Department recommended approval of the larger project at 33 units. He believed the Department felt that density bonuses were permissible and concerns to the contrary prompted Mr. Bilodeau to review the Code. The applicant intended to make the necessary adjustments to adhere to the interpretation. Mr. Lawhorn wanted to verify that the City was in good legal standing and trusted Mr. Bilodeau's guidance. He had concerns over the first-floor apartments and was glad they were removed from the proposal because he thought it set a bad precedent for the BB district. He feared that storefronts could be adapted to more profitable uses and change the downtown atmosphere. He asked Ms. Gray if the subdivision agreement forbid changing the use to an apartment. Mr. Bilodeau interjected that the language could be included but clarified that his opinion on the first-floor apartment indicated the issue was moot because the developer removed the request. He added that in the College Square Shopping Center, also BB district, first floor apartments were permissible. His opinion stated that the issue was moot and was previously allowed. He repeated the provision could be included in the subdivision agreement. Mr. Lawhorn wanted to include the language and thought the issue could be reviewed on a case by case basis and noted that College Square was split mixed use and not the same as Main Street. Mr. Tracey clarified that the applicants never intended to have first floor apartments on Main Street and always intended that first-floor Main Street would be commercial and the back of the building would have first floor apartment units. He reiterated that the applicant had no interest in pursuing the issue and understood that even if the applicant wanted to convert the area to first floor apartments, he would have to go through another SPA. Mr. Lawhorn understood there were special cases but did not want normal rules to allow it.

Mr. Lawhorn asked if staff was comfortable with the parking lot design regarding safety and access. Mr. Coleman confirmed and noted that the current lease agreement with Danneman obligated the City to provide 16 free annual parking permits for the property. He counted that the lot would lose 18 spaces but was unsure if the correct number were 16 or 18. Mr. Lawhorn noted that either 16 or 18 spaces would be lost in construction, but the lot would gain 16 or 18 spaces through eliminating the obligated annual parking permits. Mr. Tracey interjected that there may have been 16 permits but 8 permits for residential uses were returned and redirected to a different spot. He continued that the remaining permits were tied to leases with clients and not with the City. He assured Council that as the leases were up for renewal, the applicant would work to move them out as well. He pointed that none of the permits guaranteed a spot, they only excluded the drivers from paying a fee. Mr. Coleman expected if the permits were moved, they were moved into Lot 3 or Lot 5.

Mr. Lawhorn spoke to a member of the Aetna Fire Department Board that supported the project from the standpoint that an older building lacking safety protocols in current Code was being replaced with new construction. He reiterated the need for student housing, acknowledged its impact on rental costs, and fully supported downtown apartments targeted towards students. He recognized it was illegal to restrict the apartments but was concerned about density rules that promoted six-bedroom apartments that were unlikely to be leased by other demographics. He thought the issue was a separate conversation on how to improve code to encourage applicants to build desirable apartments for the City's inventory. He assumed the Design Committee was not meeting due to the pandemic but wanted it to resume in order to include its input in forthcoming projects regarding maintaining the character of the town while promoting proper growth and development. Mr. Coleman interjected that the Design Committee ceased meeting two years ago and was part of the Downtown Newark Partnership (DNP), which had sunset but still existed in Code. Staff brought an ordinance forth to create a stand-alone committee which either

failed or was tabled and Mr. Coleman assumed membership lacked because the status of the Committee was unknown, and the group was unable to meet quorum. He suggested discussion on creating a stand-alone Committee as opposed to a subset of the DNP and Mr. Lawhorn supported the suggestion.

Mr. Tracey interjected that the Main Street façade of the building was not reviewed by the Design Committee when it was a larger project but then said that the front design from the picture facing Main Street evolved from the Design Committee's meetings. He added that the applicant had several different designs of the rear portion of the building connecting to the eastern part of the lot that would have created a few additional parking spaces but the design on the submitted plan was one that the City and the fire company agreed worked best for the lot. He explained that the applicant considered an elevated building, similar to the corner of Chapel and Main Street, to allow parking underneath but there were concerns about necessary heights to allow for trucks to access the trash compactor on the other side.

Dr. Bancroft appreciated the considerable thought from previous Council comments. He acknowledged the City had parking limitations and was an issue within the community. He did not see the loss of 16 spaces as a huge detriment considering what was downtown. He acknowledged the applicant made efforts on the appearance of the building and considered security and safety issues. He shared that his main environmental focus was LEED certification and it helped him understand that the applicant strived to be a good citizen. He viewed removing the first-floor apartments and installing a car charger as good faith efforts and agreed there were environmental benefits to concentrating the student population downtown which would also help avoid confrontations with more established residents in the neighborhoods. He noted the Parking Committee and previous Councils reviewed the project and the applicant considered how best to comply with the rules in the spirit of the City's vision. He reviewed the plans and thought using local subcontractors was a positive aspect. He wanted to prevent a seven-story building but understood the parking issue would need to be addressed in the future. He believed the project complied with the City's efforts.

Ms. Hughes asked Mr. Tracey if the waiver was for 67 parking spaces and he confirmed. She shared that the most consistent complaint she heard from constituents and residents was traffic and parking on Main Street. She asked how Mr. Tracey would explain to her constituents that the waiver was a positive. Mr. Tracey replied that the largest component of the waiver was the residential component of the building which generated the most parking. When the City denied the building's residents the ability to park cars downtown, then they would be forced to park in remote lots and would rely on alternative transportation. He agreed there would be a loss of 16 parking spaces as a result of the project, but they were not being replaced by the ability of the building's residents to park in the lot. He pointed that the City would not issue passes for the lot and noted that passes for City lots were more limited. He emphasized that the applicants could direct student residents to UD parking lots. Ms. Hughes had no further questions.

Mr. Horning previously spoke with Mr. Danneman regarding parking concerns. He understood that residents were sensitive regarding Main Street parking and he believed a waiver for 67 spaces was excessive given the chronic lack of parking but understood the concept of decoupling the parking. He thought students were more willing to take an Uber or Zip Car as opposed of having a personal vehicle but was concerned that the parking waiver decision was a leap of faith with no contingency plan. He was unaware of a proof of concept and reviewed materials where Council granted waivers but noticed the waivers were generally on the smaller side. He received feedback from District 1 that argued the City had codes and laws to consider and questioned why variances were granted. He asked Ms. Gray if staff had further considered a zoning code for "urban apartment" that would have a smaller parking requirement. Ms. Gray confirmed that she crafted a draft ordinance for "urban apartments" that was intended for residential areas and not downtown. She informed the draft ordinance included reduced parking requirements and was discussed at the Planning Commission but had not moved forward. She added that Kimley-Horn consultants were hired to consider parking requirements and were beginning Phase 2, but Phase 1 was not yet completed. Phase 1 was a report to Council in Ms. Gray's possession, but she had not yet reviewed the document and hoped to have it to Council within a few months for input. After Council direction, staff would develop any changes to the zoning parking regulations and districts throughout the City. Mr. Horning believed the initiatives would assist in creating a broader community discussion to better explain parking decoupling and lowering requirements. He acknowledged the pandemic caused a strained situation with mass transit and Unicity. He recalled discussions about lowering the parking requirement for the former Dickinson Dorms because some residents did not want to have a heated parking lot and others were nervous about where residents would shop and that the vehicles would end up in neighborhoods. He noted that the project was located next to Walgreens which sold some grocery items and students also ordered through Amazon.

Mr. Horning thought the building's setback helped with street creep from more recent construction. He understood the project's footprint was further back than the current building and discovered that the applicant did not have enough space out front for a common area but suggested a variance of six feet would allow for more space. He did not think the side yard was an issue and pointed that Fire Marshal Tynan did not have concerns. He acknowledged that the intent of Site Plan Approval was for the bonus points in order to get Code variances and resulted in a more desirable project for the overall community. He asked if putting parking in could increase the height even as a by-rights proposal. Ms. Gray asked if Mr. Horning meant that if the applicant elevated the building to create parking underneath, then he would receive a height bonus. Mr. Horning theorized the project could be rejected and the applicant could decide to return with a by-rights plan including parking and asked Ms. Gray for the possibilities. Ms. Gray explained a by-right plan would have to include 67 parking spaces and speculated the project could have parking underneath or a be smaller building. Mr. Tracey interjected that it was possible to also go vertical to accommodate stacked parking underneath or behind. He pointed to visibility issues if the building was higher. He reiterated the building was originally 10 stories and was reduced to 5 stories. He noted when the neighboring Walgreen's was redeveloped with first floor retail and 14 apartments, the applicants received a 56-space parking waiver which was really a 100% waiver because the applicants gave property to City to incorporate into Lot 4. Mr. Horning asked what height the applicant was considering if the parking was required and built by-rights. Mr. Tracey was unable to answer the question because the entire site would have to be redesigned but argued when the project was contemplated for a 10-story hotel, the plan called for large portions of Lot 4 subsumed with cooperation of the City. The plan was abandoned due to the many difficulties for consideration. Mr. Horning agreed that extra cars were undesirable and did not want to egress onto Main Street.

Mr. Clifton noted that Site Plan Approval was not by-rights and did not want to confuse the issues. He referred to the Site Plan Approval table in the presentation and argued that if the plan were truly by-right, the setback would be 20 feet, not 12 feet, the side setback would be 8 feet, not 0, and there would be 24 units, not 28 units. He stated that by-rights were more detailed than adhering to Code. He recalled his previous time on Council and stated that many of the waivers granted were reasonably small and fewer than 10 parking spaces but he noticed the waivers had increased in the interest of supposedly getting a more favorable product. He shared that Center Square was a 100% waiver and he had voted against the motion.

Mr. Clifton asked Mr. Bilodeau where decoupling was defined in Code. Mr. Bilodeau responded that there were no portions of Code that discussed decoupling or eliminating parking requirements of a building but informed the Parking Subcommittee issued a report that Council favored which discussed decoupling. The Subcommittee's report defined decoupling as reducing or eliminating off-street parking requirements and he believed a process should have been created. Mr. Clifton understood decoupling was in the report and was accepted by Council but argued the process was a long way off from codification. He felt the process had been hijacked and Council had given up some control. He argued that the residents expected Council to have control over parking and Council needed to recapture control from staff. He understood the conversation was not over decoupling and asked if the concept of decoupling allowed property owners to decide that a set number of parking spaces for residents could be switched for retail customers. Mr. Bilodeau confirmed and understood that decoupling could be interpreted differently. He gave the example of an applicant having 120 parking spaces for apartments but could decouple the requirement so some of the apartment residents would not have access to parking and the spots would be used for other purposes. Mr. Clifton believed the concept allowed different property owners to have public paid parking or more parking for businesses.

Mr. Coleman interjected that he believed decoupling referred to two concepts. The first was decoupling parking spaces from an apartment unit so the residents would pay rent for the apartment and then chose to pay additional rent for a parking space. The intent was that if a resident did not have a car, then it was unnecessary to pay for a parking space and allowed for a more efficient use of parking and spaces. He informed Council that the Parking Subcommittee's recommendations were to reduce parking requirements, potentially to zero, and to use decoupling so that parking spaces could be used more efficiently. He hypothesized that instead of building 120 spaces, the parking requirements go to 60 and could be leased separately from units so residents who wanted spaces could pay for them and the cost of the parking lot could be more equitably distributed to the residents who utilized them. He informed that Trader's Alley had some apartment units and parking spaces that were allocated to retail. He explained that some spaces were numbered and assigned to a specific apartment user and the majority of the spaces were pay-by-space. He pointed that the practice was not forbidden in Code and suggested further investigation to regulate. He disagreed that staff hijacked decoupling because Code stated that spaces had to be provided but did not specify that the spaces needed to be reserved for individual users. He supported changing the language if it was Council's desire.

Mr. Clifton thought that a typical resident might not understand the nuances and assume that a plan which illustrated some spaces for retail and some for apartments would be per Code requirement. He acknowledged his issue was not with the project but with the idea of parking waivers and noted that City and UD parking were additional costs. He thought it was redundant that there was less parking and the City and UD would make more money on student-paid parking. He considered the distance of some of the lots to be a personal safety issue for students walking alone at night. He emphasized that the backyards of student rentals on Chapel Street had no grass because the parking spaces were rented out. He felt that the argument that students would not bring vehicles was disingenuous and stressed that students were bringing cars and arguing to the contrary was a deception.

Mr. Clifton understood there was no communication on how the applicants would access the property and safeguards for construction equipment placement. Mr. Tracey confirmed the plan would have to be finalized prior to finishing the CIP process. Mr. Clifton referred to the site plan from the architect and understood some students would clearly be able to walk to campus, but a significant number could not and referred to Mr. Tracey's comments that most of the student residents would use bicycles. Mr. Tracey corrected that he said it could be assumed that some residents would use bicycles and he only could speak from his own experience that he walked everywhere as a student and parked his rarely used car in a satellite spot. Mr. Clifton did not want to misrepresent Mr. Tracey's statement and but noted the project had 90 beds and 26 bicycle spots. Mr. Tracey informed there was bicycle storage on the floor with all of the units as well and the applicant only showed the first-floor plan. Mr. Clifton was referring to the synopsis of the primary plan that stated, "one bicycle rack parking space opening or slot per five required parking spaces" and ultimately concluded 26 bicycle spots. Mr. Tracey emphasized that the applicants were not seeking less than what was required by Code and reiterated there were additional spaces available for storage on the upper floors and inside the apartments as well. Mr. Clifton asked if each unit had storage closets and Mr. Tracey could not confirm for every unit but stated the plans included storage closets.

Mr. Clifton shared that a consistent online discussion centered on when Newark would stop building apartments and he responded the development was demand driven which would stop when UD ceased increasing enrollment and decreasing housing. He was not demeaning the University because the City's primary business was education. He wanted to go on record as saying free market determined the need for apartments. He liked the design of the building and thought the front façade was tasteful and compared it to the Opera House and Klondike Kate's. He understood the back of the building was not visible to passing traffic and thought it was bland and needed more architectural appeal. Mr. Tracey confirmed the applicants were working City staff on the designs and corrected his earlier statement by clarifying the 26 bike spaces referred to exterior bike spaces and did not include interior spaces. Mr. Clifton thanked him for the clarification.

Mr. Clifton noted the project would use brick veneer and asked if there had been any consideration in using real brick for the façade given the failure of veneer on another local building which caused safety concerns. Mr. Wilson replied that the term brick veneer spoke to the structural integrity of the wall which was intended to be a full 4-inch deep nominal brick and was not a thin veneer. He explained the term veneer was used as a load bearing brick versus non-load bearing and confirmed the wall was full brick. For the record, Mr. Clifton asked if the wall would be a full real brick wall and Mr. Wilson confirmed.

Mr. Clifton reiterated the rules for public comment and the Mayor opened the floor to public comments.

Ms. Bensley read a comment from John Horner, 113 East Main Street, into the record:

Mayor and Council, I am going to comment about this potential construction project, but these comments also apply to any upcoming projects along Main Street. Except for the recent hotel project (which is also being updated), all big projects on Main Street involved building 3-6 story buildings consisting of commercial/retail on the bottom floor with rest of the floors being apartments ranging from 2-6 bedrooms. We all know that these building are being put up to house college students. This is the cash cow for developers in Newark. Two thirds of the students are from out of state and most have parents that can afford to rent them an off-campus apartment. Therefore, these apartment buildings are mostly filled by students which has now led to a lack of age range diversity on Main Street in the downtown center. With this planned project as well as the one planned for the corner of Main and Haines, the demolition and rebuilding of the building at Main and Center streets and the addition of apartments to the Lang hotel project, there will be another large increase in the number of students living on Main Street.

There has been a decrease in the number of non-restaurant businesses on Main Street over the last 10 years. This is partly due to the change of shopping habits of the general population (online shopping) but people still would like to walk a downtown. There just isn't as much to see and do on Main Street other than eat anymore. Why are we not encouraging cheaper rents on these ground level units to give more entrepreneurs the chance at a business? The landlords make enough money to reduce rents to encourage this. Developers shouldn't be allowed to leave vacant storefronts while they continue to build larger buildings. Part of the problem is also with an increased student population downtown; businesses want to cater to them, but they are only here about 8 months of the year making it a seasonal business and difficult to prosper year round.

I happen to live in Washington House where the only non-student population in the Main Street downtown section resides. Washington House, though initially struggling to fill the condos after being built, has been fully occupied for 5-6 years now and only about 3-4 condos of 54 have students in them (with parents as owners). There have been many resales over the last 2-3 years which means there is still a current interest in condo living on Main Street. However, this desire will eventually wain if all that happens to Main Street is the moving of campus onto Main Street. It is wonderful to live downtown in a college town, to be able to walk to so many restaurants and the few businesses we have left and the availability of the university. Why doesn't the planning department push for more condo development on Main Street instead of student apartments? Does the City of Newark receive the same amount of property taxes from these student developments as they do from a condo development like Washington House? There must be some incentive to the city that they keep encouraging apartment dwelling. Unfortunately, millennials do not want to pay the higher rental cost of living downtown (as opposed to living outside of town) or live with the college students once they are out in the real world.

I don't have the answers to all these questions, but I and many others feel that the City of Newark doesn't really plan for the future. Planning in this town appears to be done by the developers. I keep hoping this will change but it hasn't yet. Only council can force such changes. You have the power.

We have a fairly new city Council. What is your vision of downtown Main Street Newark? It has changed in the 30+ years I have lived in Newark, the last eleven on Main Street and sadly, not necessarily for the better. The street looks better than it ever has but with many empty storefronts and the lack of diverse shopping, what makes you think the current building approach is going to yield something different? Main Street awards were won in the past, I don't think Newark will be winning again anytime soon. I didn't necessarily pick on the current project you are addressing tonight, but I wanted you to keep the BIG picture in mind because of all the projects coming up for approval.

Ms. Bensley then read a comment form Dennis Aniunas, retired Lieutenant of the Newark Police Department:

Mayor Clifton and members of the Newark City Council. I am writing to express my support for the Danneman & Danneman LLC East Main Street project. As you know, the Danneman's have been cornerstones in the Newark community for decades. They have continually improved the landscape of the City of Newark, bolstering both the aesthetics and business to the City.

I personally developed a professional relationship with George Danneman ten years ago. George has always been a dedicated supporter of the Newark Police Department. He has donated funds to the Newark Police K-9 Unit, provided needed equipment to the agency, and offered prime, rent-free, real estate space for the Newark Community Policing Center.

I was personally involved in the Newark Community Policing Center project. While it was a great location, the building was clearly dated and in need of major repairs. Over the past several years, many of East Main Street's old buildings have come down and have been replaced by newer, modern buildings. This project will continue to add to the improved look of East Main Street. It will capture the historic feel of the buildings of years past, while adding to the vibrant culture of Newark's Main Street future. I sincerely hope you approve this project.

Ms. Bensley then read a comment from Jeffrey Standard, 208 Murray Road:

Dear Council members,

This is a letter to you in support of the current plan for the building project located at 132 -138 East Main St. The previous plan was designed as a hotel with first floor retail space. The current plan is designed as student housing with first floor retail space.

I attended a public rollout meeting for the original plan at the SpringHill Suites some time back and witnessed concerns about the property's improvements and its use. At that meeting I expressed my concern over the lack of input by the future generations of the community's opinion of the project. I hope in the elapsed time since then that Council members addressed that concern with the same objective view that the developers of the project addressed the concerns presented to them.

First and foremost, any improvement to the properties will be of great value to the community if for nothing else than an upgrade to public and tenant safety based solely on new and improved code requirements and new construction materials and techniques. Changes to the property's use, primarily a change from commercial transient housing to student housing, seem to address the preferences expressed in the past by city council.

Spearheaded by a longtime local family business concern, the change of architectural appearance to better blend in and mimic the existing properties of the Opera house and the Academy building, and others, to resemble existing architecture in a more aesthetically pleasant fashion, illustrates a commitment by the developer to meet the city's expectation of "Main Street" continuity.

As for property management, that same business concern has demonstrated, for decades, their ability and willingness to operate as smart and invested members of the city's community in the operation of all of its business concerns.

In so much as the Planning Department has given its approval of the current proposal, I see no reason, as stewards of the city for today, and for generations to come, why City Council would find reasonable and legal reason to deny the proposed application.

Ms. Bensley read a comment from Andrew O'Donnell, District 3:

Please approve this development project.

I used to live in a similar building like this in Minnesota and it worked out very well. It's very efficient and popular all over the world to have ground-floor retail within walking distance from apartments on upper floors, which are also more secure than being on the ground floor and have better views. The plan looks extremely detailed, well-reviewed and thought out for helping to resolve our lack of housing near campus. The building architecture looks good too. I like how it blends in different styles in layers, rather than being a monolithic block. Increased population density is also better for the environment than spaced out dwellings.

I also appreciate the LEED certification, electric vehicle charging space, and provisions for solar panels. Every kilowatt helps fight the Climate Crisis and would be a welcome addition to our renewable energy program. I am curious how much more it would cost to make it a Net-Zero building though.

I hear other residents complain about increasing traffic and casting a shadow, but I believe this project will contribute better than bad to Newark's culture and economy. The developers must believe there is value in it, or they would not put their effort in it. So that tells me there is probably market demand for growth like this. The city will also benefit from the increased tax revenue from these residents and businesses as they pump new blood into the life of our healthy city. Please approve it, as presented. Thank you!

Ms. Bensley introduced Chris Locke:

Mr. Locke wanted to first answer two questions raised about two of his properties. He informed that 16 North College did not have a request for a parking waiver from the Board of Adjustment, it was an increase of seats and tables in the restaurants and the parking waiver had already been accepted to allow the additional seats and tables. He informed Council that Mr. Tracey was correct that Center Square received a parking waiver for 54 spots, but 42 spaces were given to the City as well as ownership of the land, not a 99-year lease.

Mr. Locke clarified that he supported Mr. Danneman's right to redevelop his property and found the building to be designed nicely. He believed Mr. Danneman should be able to realize the greatest return on his investment with the caveat that it be allowed by law or Code. Mr. Locke continued that for the development community to thrive and, indirectly for the City to thrive, there needed to be a set of rules, established boundaries, and a level of certainty as to what was allowable. He reiterated his support for the applicant's request for redevelopment, knew the Danneman family for decades, and acknowledged their contributions to the City. He emphasized that his comments were not against the applicant but

rather against the use of Site Plan Approval and the interpretation that the City Solicitor said as it pertained to bonus density. He intended to submit a letter to the Planning Commission in January but was denied. In the letter, he explained that bonus density was allowed per Site Plan Approval for very specific zoning codes as stated in Section 32-98 (RH, RS, RD, RR, RM). He continued that Code specifically did not allow bonus density for BB which was where he disagreed with Mr. Bilodeau. He referred to Section 32-98.2, Density Bonus, that specifically stated which zoning classifications were allowed bonus density and then further discussed new uses in businesses (BB and industrial) where it could increase gross floor area up to 15%, not bonus density. He argued that the nuance was for a bigger unit, not for more units. He continued that gross floor area could be used to mean ADA compliance, commercial space, mechanical, et cetera. He referred to the case load that Mr. Bilodeau cited and revealed that in the Oceanport Industries, Wilmington, Delaware case, the Court stated that “words and statutes should not be construed as surplusage if there is a reasonable construction which will give them meaning and courts must ascribe a purpose to the use of the statutory language if reasonably possible.” He argued that the statute was clear of what zonings were allowed bonus density and never in the history of Newark, including College Square, did they get a bonus density. He reiterated his support for Mr. Danneman’s project, but emphasized there should be 24 units, not 28. He emphasized that the last paragraph of Section 32-98 prohibited exactly what was being proposed and Section 32-97(b) stated that the Site Plan Approval should not be used a substitute to the Board of Adjustment. He argued that Mr. Danneman should go before the Board of Adjustment because Site Plan Approval was for very unique projects. He agreed with Mr. Hamilton that the only people who could change the Code were the legislative body, not the interpretation of the City Solicitor. He believed Mr. Bilodeau’s interpretation would have dire consequences for the downtown area, destroy the jurisdiction of the Board of Adjustment, and neutralize the Code provisions.

Ms. Bensley next introduced Will Hurd, Chair of the Planning Commission. Mr. Hurd stated he was also a member of the Parking Subcommittee. He thanked Mr. Coleman for accurately summarizing the definition used for decoupling of parking and agreed it was solely for residential uses with the intent to both lower the cost of the apartments by allowing more units in buildings and making it so residents would not pay for parking spaces they may never need. He clarified the Parking Subcommittee never expected to remove cars from the City rather, they strongly felt there were more economical long-term parking places than in the central business district. He noted that City lots were not intended for residents to park overnight or long-term and revealed that a member of the Parking Subcommittee was also a manager of UD Parking who shared that there were available spaces for students to utilize with public transportation. Mr. Hurd emphasized that UD had an infrastructure to support the process. He continued that the Planning Commission had developers who followed the parking discussions, read the recommendations and reports, and presented projects that met the intentions of the recommendations. He explained the parking waiver process was the only mechanism the Planning Commission had as means of support and used the parking waiver to get the desired results. He reiterated there was no mechanism to decouple parking within Code, so the Planning Commission used the parking waiver process while the legislation for the ordinances was enacted.

There was no further public comment and the Mayor returned the discussion to the table.

Mr. Tracey found many of the comments regarding the project to be positive with many thoughtful issues raised. He would not enter into a debate with Mr. Locke as to whether Mr. Bilodeau’s opinion was valid. He revealed that the applicant did not request an opinion, the City Solicitor offered it on questions raised by Mr. Locke and the applicant was content to revise the plan to match Mr. Bilodeau’s interpretation. He reiterated that Mr. Bilodeau was the interpreter of Code for the City and noted there was a 30-day appeal period for City interpretation which had already passed by a few weeks. He corrected that 19 spots were lost out of 33, not 16 out of 30, but emphasized that the percentage was the same.

Mr. Hamilton acknowledged he had only been a Councilperson for four years but had been attending Council meetings for some time. He noticed that some developers used previous projects as an argument for exceptions which offended him. He contended that situations changed, and exceptions made in the past could not continue. He warned that when Council made decisions, they could be quoted as precedence. He agreed with Mr. Tracey that when land use decisions were made, there was a challenge period and he hoped the rule would be changed. He reiterated that the appeal was for a special use permit and a parking waiver and Council was not bound by any means to approve and, if it were approved, the decision could be used as precedence. He reiterated that if the parking waiver were granted, the public would interpret that the City approved parking waivers and additional density without a Council definition. He noted staff had not returned with the recommendations by the Parking Subcommittee and revealed that Council had not approved anything. He claimed the decision was a conditional approval for Council to later consider. He maintained there were faults in the submittal, and it was a work in progress. He wanted Council to have the proper tools and did not think making exceptions was the proper route. He emphasized there was a parking problem in the downtown area and understood that potential

residents would bring cars and need parking spaces. He agreed that buildings should be built with LEED certification but did not think it should have anything to do with a parking waiver. He hoped Council voted no because he thought the project could be better.

Dr. Bancroft preferred to believe that internal combustion cars would be defunct within his lifetime and found that the planners reviewed the project meticulously. He appreciated the considered thought and discussion.

Ms. Hughes addressed Council as a resident to offer perspective. She had been on Council for two years and believed terms should be four years given the learning curve. She agreed with Mr. Hamilton that projects were done by piecemeal and there was no continuity or consistency to make decisions that had far reaching consequences. She used to walk down Main Street and described it as appealing. She agreed that things changed, and the pandemic had a large impact, but the current version of Main Street was that an overwhelming number of college students were creeping further into the residential areas. She referred to a comment in the proposal that it was a good idea to keep students in the downtown business district and argued there was a huge difference between the residents with family lifestyles and what college students wanted. She did not think it was possible to blend the two lifestyles on Main Street and emphasized that traffic and parking were issues. She admitted residents expected change from the charm Main Street once had but not to the current extent. She believed that every exception removed Council from the decision-making and put developers in a stronger position to argue for projects. As a Councilperson, she often heard comments that the sidewalks were too crowded. She believed the rules in place should have prevented over expansion huge buildings with parking waivers. She wanted everyone to step back before making decisions because they could not be undone. She did not want Main Street to become completely inhabited by the college and said that City residents felt left out and forgotten.

Mr. Horning said that District 1 residents were driven by the Code as it stood and believed that any Code changes should go through the traditional legislative process. He noted that the City expended \$50,000 for Kimley-Horn to perform consulting work and present their perspective on what worked in other cities outside of Newark's jurisdiction and to suggest Code changes. He revealed the 67-space waiver was generated by the developer and not the consultants or Planning Department. He believed the integrity of the analysis was lacking and not driven by data from the consultant. He referred to paragraph 9 of the Subdivision Agreement and did not find any mention of air monitoring for asbestos and harmful materials and asked Ms. Gray for input. Ms. Gray replied that the language would go in during the CIP stage and be handled by the Public Works and Water Resources Department. Mr. Coleman replied the only time he could remember a project that required external air monitoring was at the Dickinson Project because the City knew there was asbestos at the location. He admitted he did not know enough about Item 9 and why it was included in the Subdivision Agreement but agreed it could be required. Ms. Bensley interjected that Code Enforcement requested the language be included as a standard operating procedure for Subdivision Agreements and would be included in most of the upcoming development projects. She emphasized it was not included because of a known hazard but would be a standard request moving forward. Mr. Horning agreed that staff knew that remediation was necessary with the Rodney and Dickinson sites. He asked what additional action would be taken if asbestos was discovered. Ms. Bensley referred to Ms. Gray's comments any results from the survey would be addressed during the CIP process.

Mr. Clifton asked Mr. Lawhorn if he wanted to offer an amendment and Mr. Lawhorn confirmed he wanted to add to the Subdivision Agreement. Mr. Clifton stated the parking waiver would be voted on first and the order would be 9C, 9A, and 9B. He reminded that 9B and 9C would require Council to provide reasoning. Mr. Lawhorn thought that some of the comments regarding the recommendations from the Parking Subcommittee were skewed. He explained the Subcommittee was comprised of residents, staff, planning experts, UD representatives, UD students and had lasted years. He recalled that Council approved the plan but not all of the items in the plan. He credited Mr. Hurd for highlighting the logic behind not requiring parking for apartments. He thought it was important to recognize that the City was not losing 67 spots, rather the applicant was not required to build an extra 67 spots. He did not disagree that students would bring cars but thought they would not be parked in normal City lots. He wanted to clarify any misinterpretation prior to the vote.

The Mayor requested a motion for agenda item 9C.

Mr. Horning interjected and asked if a denial meant the applicant could not return before Council for two years. Ms. Bensley understood that a denial for rezoning could not come before Council for two years and thought it was possible that Special Use Permits could also have the same ruling, but she would review the relevant Code provisions. Mr. Horning acknowledged Mr. Danneman's efforts to work with the City and wanted to offer the courtesy to table the motion to allow for revisions instead of denying them. Mr. Clifton asked for which item Mr. Horning was recommending a tabling motion. Mr. Horning said he

was raising the issue and wanted to offer the applicant the chance to request tabling. Ms. Bensley informed Mr. Horning that Section 32-45(b)(8) that “if an application is disapproved by the Planning Commission and/or subsequently disapproved by City Council on appeal, an application for the same property cannot be considered for a period of two years from the date of final determination by the City” and was under the parking waiver requirements.

Mr. Bilodeau asked Ms. Bensley if there was a prohibition on appealing a parking waiver decision and Ms. Bensley repeated her comment. He thought the first vote would be on the parking waiver because if the waiver failed, then the rest of the application was moot. He wanted the applicant to understand the prohibition requirements.

Mr. Tracey would defer to Mr. Danneman’s decision on whether the project could be tabled to consider an alternative way or make further revisions of the plan before the City voted. He was awaiting Mr. Danneman’s response on if the project could be tabled for 30 days for review.

The Mayor adjourned for five minutes and would reconvene at 10:35 pm to give Mr. Tracey the opportunity to consult with this client.

3:32:00

The Mayor reconvened.

Mr. Tracey did not believe 30 days was sufficient for the applicant to review available options. Mr. Danneman wanted to move forward with the vote to determine the City’s will.

The Mayor asked for motion for agenda item 9C.

20. 9-B. REQUEST OF GEORGE DANNEMAN ON BEHALF OF DANNEMAN & DANNEMAN LLC FOR A SPECIAL USE PERMIT FOR 28 APARTMENT UNITS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 132-136 EAST MAIN STREET (SEE 9-A AND 9-C)

21. 9-C. REVIEW OF THE 67 SPACE PARKING WAIVER AT 132-136 EAST MAIN STREET BY THE PLANNING COMMISSION FOR THE MAJOR SUBDIVISION APPLICATION AT 132-136 EAST MAIN STREET AT THE REQUEST OF THE MAYOR (SEE 9-A AND 9-B)

3:33:00

MOTION BY MR. MC.DERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE 67 SPACE PARKING WAIVER AT 132-136 EAST MAIN STREET AS APPROVED BY THE PLANNING COMMISSION ON JANUARY 5, 2021.

MOTION FAILED. VOTE 3 TO 4.

Mr. McDermott agreed with the Planning Department’s November 24, 2020, December 28, 2020, and February 1, 2021 reports and with the Council’s previous approval of the Planning Subcommittee recommendations on March 26, 2019. He supported the motion.

Mr. Lawhorn voted yes for the reasons stated by Mr. McDermott.

Mr. Hamilton voted no because the project would negatively affect the health and safety of persons residing and working in the vicinity, increase traffic, and would be detrimental to public welfare, injurious to property and improvements in the vicinity. He did not believe the project would improve the character and would negatively impact the development patterns of the central business district with increased traffic.

Dr. Bancroft agreed with previous rulings by the Parking and Planning Commissions and appreciated the environmental aspects of the proposal. He voted yes for the reasons stated by Mr. McDermott.

Ms. Hughes voted no based on whether the applicant demonstrated that the proposed use was not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business.

Mr. Horning voted no for the reasons stated by Mr. Hamilton and Ms. Hughes and added that the decoupling concept lacked firm plans.

Mr. Clifton voted no for comments from Mr. Hamilton and added it would be detrimental to public welfare and injurious to property or improvements within the City of Newark boundaries.

Aye – Bancroft, Lawhorn, McDermott.

Nay – Hamilton, Hughes, Horning, Clifton.

The Mayor informed the vote nullified the need to vote on items 9A and 9B.

22. Meeting adjourned at 10:41 p.m.

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

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