

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**May 10, 2021**

Those present at 6:15 p.m.:

Presiding: Mayor Jerry Clifton  
Deputy Mayor, James Horning, District 1  
District 2, Sharon Hughes  
District 3, Jay Bancroft (arrived at 6:17 p.m.)  
District 4, Dwendolyn Creecy (arrived at 6:33 p.m.)  
District 5, Jason Lawhorn  
District 6, Travis McDermott

Staff Members: City Manager Tom Coleman  
City Secretary Renee Bensley  
City Solicitor Paul Bilodeau  
Chief Communications Officer Jayme Gravell  
Chief Purchasing and Personnel Officer Jeff Martindale  
Electric Director Bhadresh Patel  
Finance Director David Del Grande  
NPD Deputy Chief Kevin Feeney  
Parks and Recreation Director Joe Spadafino  
Planning and Development Director Mary Ellen Gray  
Parking Manager Marvin Howard  
Parking Supervisor Courtney Mulvanity  
Planner II Michael Fortner  
Planner II Tom Fruehstorfer  
Public Works and Water Resources Director Tim Filasky  
Public Works and Water Resources Deputy Director Ethan Robinson

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1. Mr. Clifton called the meeting to order at 6:15 p.m.
  2. **EXECUTIVE SESSION**
    - A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (2) for the purposes of preliminary discussions on leases of real property.  
  
MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (2) FOR THE PURPOSES OF PRELIMINARY DISCUSSIONS ON LEASES OF REAL PROPERTY.  
  
MOTION PASSED. VOTE: 5 to 0.  
  
Aye – Horning, Lawhorn, Hughes, McDermott, Clifton.  
Nay – 0.  
Absent – Bancroft, Creecy.
  3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:00 p.m. Mr. Clifton indicated that no further action was required.
  4. **SILENT MEDITATION & PLEDGE OF ALLEGIANCE**

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

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):

**04:05**

Caitlin Olsen, UD Administration, informed that UD would require vaccines for students in the fall semester. She shared that UD staff performed internal surveys and discovered that in the over 5,000 responses, 96% were either fully vaccinated, in the process of vaccination, or had a desire to obtain vaccinations. UD staff viewed the responses as good indicators of vaccine participation and would continue to work with partners to host events on campus. She shared that while the events were geared towards students, faculty, and staff, they would be open to the public. The next event was scheduled for Thursday, May 20<sup>th</sup>, at Clayton Hall on the Laird Campus, from 10:00 a.m. to 4:00 p.m., to distribute the Johnson & Johnson vaccine. She continued that participation required sign-up and reiterated that UD affiliation was not a requirement. She forwarded the information to Mr. Coleman and Ms. Gravell and asked that the information be shared with constituents so that everyone had access to the vaccinations. She continued that UD staff would continue to perform surveillance testing over the summer every Wednesday when the summer session began after graduation. New student orientation would be held online and in person over the summer. She estimated 200 people would be at the Trabant Center and the half-day events would give UD staff the opportunity to push parents and students into the business community as UD would not provide lunch or dinner. She shared that UD was working with The Newark Partnership (TNP) to compile a list of specials and coupons to be provided in the welcome packets to encourage parents to head to Main Street. She hoped that Council would share opportunities as they arose because UD wanted to help bring the City back to life. She emphasized that Main Street was a huge part of the small town feel and UD was open to collaborations.

The Mayor opened the table to questions from Council.

Mr. McDermott thanked Ms. Olsen for the presentation and asked what percentage of the student population was currently vaccinated and how UD planned to confirm that the students were truly vaccinated upon their return in the fall. Ms. Olsen did not yet have that data available for the percentage of vaccinations because students had until mid-August to upload forms through the Student Health System. It was unclear what UD could share from a HIPAA perspective, but she hoped to see a high number of vaccinations and acknowledged that there were religious or medical exceptions.

Ms. Creecy asked if there was opposition in getting the vaccine and Ms. Olsen confirmed that there were questions and concerns that UD staff would address with parents and students. She noted that 200 other universities had also implemented the rule and UD was taking measures to ensure student safety and share options.

There were no further comments and the Mayor thanked Ms. Olsen.

Ms. Hughes asked if there were legal ramifications to vaccination requirements. Ms. Olsen admitted that there were exemptions and UD's attorneys were investigating the issue, but she was unsure of the specifics.

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

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

**12:07**

Mr. Coleman informed Council that the City took delivery of the three new electric vehicles (EV) from Porter Nissan and would put them into service shortly. He continued that staff worked with A.J. Schall and DEMA to bring a vaccination event to the week's Alfresco to provide 250 appointments for the Johnson & Johnson vaccine. Aside from the UD events, he thought the event was the first hosted by the

State in town. He informed that the tent would be on Main Street during the event, near the Dunkin Donuts, and staff would distribute Grotto's gift cards as incentive. He noted the event went live on the State's Curative vaccination website and would be heavily advertised through the City's channels.

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

**13:12**

**Mr. McDermott:**

- Supported the combination of the Alfresco and vaccination events

**Dr. Bancroft:**

- Was pleased to learn that UD enacted stricter requirements
- Understood the Pfizer vaccine would receive the full FDA approval and assumed Pfizer would be promoted for public service workers. He wanted the City to consider Pfizer as an alternative and noted that he understood legitimate exemptions but wanted to encourage vaccinations. He was pleased with the Alfresco/vaccination event.
- Thought UD's welcome packets to integrate the community should be promoted and wanted to encourage good behavior and relations on all sides.
- Informed that on Friday, May 18<sup>th</sup>, Delaware Clean Cities would present on electrifying school buses and clean air and hoped the City would continue carbon neutrality efforts.
- Asked if the City's restrictions would be more stringent than the State's for a while longer and then automatically sunset when the criteria was achieved.

Mr. Clifton informed that New Jersey Governor Murphy partnered with microbreweries and were distributing beers with shots.

Mr. Coleman confirmed that the City's regulations were stricter than the State's but effective May 21<sup>st</sup>, the State would loosen regulations. The City had an ordinance for first reading that evening and second reading on the 24<sup>th</sup> to roll back the restrictions to the backstop of the State's level and modify the gating thresholds when they would reinstate to 100 cases per 100,000 per week or 6% test positivity rate. Staff ran the number by the State and the Department of Public Health (DPH) agreed. He shared that staff received requests from the restaurant community to consider weekly Alfresco events. Staff spoke to DelDOT and had internal discussions determining that it made the most sense to hold weekly events beginning in June. He shared that DelDOT was waiting for Council's decision before issuing a decision, but staff assumed DelDOT would approve if it was Council's wish.

**Mr. Clifton:**

- Supported Alfresco and believed that residents had come to expect the event. He asked if Mr. Coleman was requesting Council's direction and Mr. Coleman confirmed. Mr. Clifton called on each Councilmember for direction to move to weekly Alfresco events and Council unanimously supported the direction.

Mr. Clifton informed that he and Jeff Martindale were involved in discussions with Maryland Rail Commuter (MARC) and the Director for the Greater Washington Redevelopment Authority regarding the possibility to tie MARC into the train station at STAR Campus. Mr. Martindale explained that during the Legislative Session, Maryland passed HB1236, which required the Maryland Transit Authority to engage in good faith negotiations to create a pilot program to connect the MARC service from Washington, DC, to Crystal City, Virginia and Perryville, Maryland, to Newark. The move would allow travel from the Greater Philadelphia area to Arlington, Virginia, by train without the need to use Amtrak. The bill passed both the House of Delegates and the Senate and included favorable votes from Delegate Hornberger and Senator Gallion. He continued that Governor Hogan initially vetoed the bill due to alleged COVID-related financial shortfalls, but the Legislature overturned the veto and the bill became law in February. He admitted that while good faith negotiations were not necessarily binding language, the pilot program was garnering support and the coalition focused on the expansion was in phase two or four for setting up the pilot. He explained the next steps were working out logistics and funding and then implementation. He reiterated that he, Mr. Clifton, and Mr. Fruehstorfer took part in a roundtable discussion with some of the bill co-sponsors and representatives of the Greater Washington Partnership to outline what would need to be included in a pilot program and how it would come to fruition.

Mr. Martindale informed that the general proposal for the pilot was to have two morning and two evening trains from Perryville to Newark. He and Mr. Clifton suggested a midday train to determine if there would be increased traffic from students that would not necessarily be reflected in the morning commute. He explained there was no firm timeline for the pilot implementation but interpreted the recent discussions as a positive sign. He noted that most of the infrastructure needed for the pilot was currently in place and anticipated an uncomplicated rollout. He emphasized that there were many

economic development implications for the City from a permanent transit expansion. He reiterated that the project was still in the early phases and he would share information as it was available. He added that the City would be better connected than ever before and most of the effort would be carried by Maryland. He anticipated there would be requests for support letters and lobbying at the Federal level and he would update as necessary.

Mr. Clifton welcomed the news on behalf of commuters to the City.

**Ms. Creecy**

- Delivered applications for the camping program beginning on June 22<sup>nd</sup> and shared that local children were excited for the program. She thanked staff for keeping children involved. Mr. Clifton appreciated Ms. Creecy's efforts.

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

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

- A. Approval of Council Organizational Meeting Minutes – April 22, 2021
- B. Approval of Council Meeting Minutes – April 26, 2021
- C. Receipt of Planning Commission Minutes – April 6, 2021
- D. Approval of 2021-2025 CIP Budget Amendment for Project W8605 – Water Tank Maintenance
- E. Approval of Recommendation to Award Contract No. 21-02 – Purchase of Okonite EPR Wire or Equal
- F. Approval of Recommendation to Award Contract No. 21-05 – Parks Signage Replacements
- G. Approval of Staff Recommendation to Update City Purchasing Thresholds for Council Approval
- H. Approval of Staff Recommendation to Update Lien Certificate Fees for Property Transfers
- I. ***First Reading – Bill 21-12*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Estimated Property Value in the Waiver of Sale Procedure – ***Second Reading – May 24, 2021***
- J. ***First Reading – Bill 21-13*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, to Increase the Fines for Traffic Violations in Highway Work Zones to Match State Code – ***Second Reading – May 24, 2021***
- K. ***First Reading – Bill 21-14*** – An Ordinance Amending Chapter 22, Police Offenses, Code of the City of Newark, Delaware, to Reduce COVID-19 Public Gathering Restrictions Effective June 1, 2021 – ***Second Reading – May 24, 2021***
- L. ***First Reading – Bill 21-15*** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, to Revise Building Setback Lines in the BB (Central Business District) Zoning District – ***Second Reading – June 14, 2021***

**26:25**

Ms. Bensley read the consent agenda into the record.

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

MOTION PASSED. VOTE: 7 to 0.

Aye – Horning, Hughes, Bancroft, Creecy, Lawhorn, McDermott, 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:** None

15. 6. **FINANCIAL STATEMENT:** None

16. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:**

- A. Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for Hard Surface Improvements for Tennis Court Maintenance and Repairs and Basketball Court Resurfacing and Repairs based on the Competitively

Solicited Contracts in Association with the National Cooperative Purchasing Alliance (NCPA) for CIP K1301 (10 minutes)

**29:04**

Mr. Spadafino explained that repairs were needed at the tennis court areas in Fairfield Park and Phillips Park, two basketball courts at Fairfield Park, and one basketball court at White Chapel Park. He informed that Municipal Code, Section 2-23 (f), stated that the City could waive the need to bid and buy from existing contracts which had already undergone public bidding in complete accordance with all applicable state and county laws and regulations. He continued that the National Cooperative Purchasing Alliance (NCPA) utilized state of the art procurement resources and solutions that resulted in cooperative purchasing contracts to ensure that all public agencies received products and services of the highest quality at the lowest prices. He shared that the NCPA contract for Athletic Court Surfacing and Asphalt Maintenance was awarded to ATC Corporation and the full price for the four court surface areas was \$111,565.50.

The Mayor opened the table to Council comments.

Mr. Horning, Ms. Hughes, and Dr. Bancroft had no questions.

Ms. Creecy asked if staff had checked the courts at Dickey Park and Mr. Spadafino confirmed that the Dickey Park court area was slated for the 2022 Budget.

Mr. Lawhorn had no questions and noted the Fairfield Park courts were popular. He considered the resurfacing to be a great investment for the park because the areas had not been resurfaced since 1993.

Mr. McDermott and Mr. Clifton had no questions.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HORNING: THAT COUNCIL WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR HARD SURFACE REPAIRS AS OUTLINED IN STAFF'S APRIL 30<sup>TH</sup> MEMO. THE BID WILL BE AWARDED THROUGH THE NATIONAL COOPERATIVE PURCHASING ALLIANCE (NCPA) COMPETITIVELY BID CONTRACT NCPA#08-18 FOR 3 ATHLETIC COURT SURFACING AND ASPHALT MAINTENANCE FROM ATC CORP IN THE TOTAL AMOUNT OF \$111,565.50.

MOTION PASSED. VOTE: 7 to 0.

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

Nay – 0.

**17. 7-B. RECOMMENDATION TO AWARD CONTRACT NO. 21-07 – POLICE VEHICLE EQUIPMENT PROCUREMENT AND UPFITTING (10 MINUTES)**

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**34:13**

Mr. Martindale explained that beyond the eight vehicles in the memo, the contract was an Indefinite Demand Indefinite Quantity (IDIQ) contract, which meant that the City would commit to a contract with the awarded vendor on an as needed basis at the rate specified. He noted that a similar agreement was used for the City's on-call engineering for Public Works and municipal planning services for the Planning Department. He explained that if the City needed to upfit three vehicles in January 2023, staff could use the rates and turnaround times listed in the memo instead of embarking on another contract process. He added that the Police Department previously used Delmarva Communications for upfitting services and appreciated the work, but staff wanted to better specify turnaround times as indicated in the contract. He noted the award would help limit contract preparation by staff and review by Council.

The Mayor opened the table to Council comment.

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

Mr. Horning asked if staff thought the request was necessary to perform the job effectively and was not excessive. Mr. Martindale replied that the upfitting was standard based on previous upfitting and noted that the items in the appendices could either be included with some of the current vehicles or not based on need.

Mr. McDermott interjected that he reviewed the contract and had experience with upfitting Police vehicles and found requests to be standard. DC Feeney explained that a committee comprised of Officers performed in-depth research and determined that the items included in appendices were necessary for duty. He noted that much of the equipment could be repurposed in future vehicles.

Mr. Clifton had no questions.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL AWARD CONTRACT 21-07, POLICE VEHICLE EQUIPMENT PROCUREMENT AND UPFITTING, TO DELMARVA COMMUNICATIONS OF NEW CASTLE, DE FOR THE INITIAL AMOUNT OF \$127,789 FOR THE EQUIPMENT PROCUREMENT AND UPFITTING OF EIGHT (8) POLICE VEHICLES ACCORDING TO THE CONTRACT APPENDICES AND STATED TIMELINES, AS WELL AS ADDITIONAL UPFITTING NEEDS AT THE RATES AND PRICES NOTED HEREIN.

MOTION PASSED. VOTE: 7 to 0.

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

Nay – 0.

18. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None.

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

- A. Review of the 52 Space Parking Waiver at 141, 143 and 145 East Main Street and 19 Haines Street by the Planning Commission for the Major Subdivision Application at 141, 143 and 145 East Main Street and 19 Haines Street at the Request of the Mayor (***See 9-B and 9-C***) (120 minutes for 9-A, 9-B and 9-C combined)

40:04

Mr. Clifton explained that the items would be discussed simultaneously, and any comments could be directed to any of the three items as the meeting progressed through Council and public comments.

Ms. Bensley read the titles for 9A, 9B and 9C into the record.

Ms. Gray stated that she would make two brief presentations. The first would focus on the parking waiver aspect of the project and the second would be on the major subdivision and site plan of the special use permit aspect. She continued that a major subdivision with site plan approval, special use permit and parking waiver for 141 East Main Street and 19 Haines Street was presented to the Planning Commission (Commission) at the December 1, 2020 meeting. The project proposal included a mixed-use building composed of 17,540 square feet of office/retail space, a 221-space parking garage split between four levels and five stories of apartments with 94 units for the purpose of student rentals on 1.52 acres. During the discussion, it was questioned whether the density could be varied under the Site Plan Approval provision process. The applicant volunteered to decrease the number of units to 60 so that a density variance would not be needed. The Commission recommended approval of the major subdivision with site plan approval for 60 two-bedroom units and also recommended approval for the special use permit, limiting the number of units to 60 two-bedroom units. The Commission tabled the parking waiver because it could not be determined if the reduction in the number of units resulted in the need for a parking waiver.

Ms. Gray continued that on December 10<sup>th</sup>, 2020, Mr. Bilodeau opined that a request for increased density was allowed via the Site Plan Approval Process but would be limited to 15%. The Planning and Development Department (Department) staff reviewed the Commission's revised recommended approval reducing the number of units to 60 and determined that a parking waiver was unnecessary. At the January 5, 2021 Commission meeting, the applicant applied for a 52-space parking waiver based on the ultimate allowable density with the 15% increase allowed under the Site Plan Approval provision which would yield 88 units. As indicated in the Department's Parking Waiver Memo dated December 31, 2020, a parking waiver could only be sought when the proposed parking number was less than what the Code required and, if additional density was sought by the applicant, further action would be required by the Commission and Council. The Commission unanimously voted 5-0 for the following motions:

- Recommend that Council direct the City to develop a shared use agreement for the parking garage. The management agreement with the City was expected to include management of the parking and enforcement, installation of the City's parking system including the T2 parking and kiosk parking system, and the camera and lighting system, striping, and the T2 hardware and software system, and the City management of the parking permitted for apartment use.
- Approve the 52-space parking waiver. The Commission emphasized that granting the 52-space parking waiver did not grant increased density for the project from 60 to 88 units which would further require action by Council and the Commission.

Ms. Gray continued that Section 32-45 (b)(6) indicated that within 45 days, Council could review, modify, or deny the Commission's approval, disapproval, or approval with conditions upon the recommendation from a member of Council, Planning Director and/or the City Manager. In reviewing the Commission's action, the review would consider the criteria in Section 32-45 (b)(2) as described in Department's Parking Waiver Memo dated December 31, 2020. Per the Code provision, Mr. Clifton requested that Council review the Commission's parking waiver decision on January 7, 2021, within the 45-day timeframe.

On April 6, 2021, the applicant presented the Commission with a revised plan for a six-story, mixed-use building composed of 17,540 square feet of ground floor commercial space, a 221-space parking garage split between four levels, and five stories of apartments, including 80 two-bedroom units. Ms. Gray noted that while the plan included the previously approved parking waiver of 52 spaces, the proposal only needed a 36-space parking waiver.

Ms. Gray then presented an overview of some of the salient aspects that she presented at the April 6, 2021 Commission meeting. She noted that the existing zoning for the parcels was BB and its existing uses were approved for the BB zoning district with no proposed changes for the zoning. The current commercial property contained three buildings including Starbucks, Del-One Federal Credit, and Duck Donuts, and the Haines Street property contained a vacant structure that was once a Simon Eye Associates. The zoning regulations for residential units in the BB zoning district indicated a maximum number of dwelling units for the parcel with two-bedroom units should be 76 units. She noted that the proposal was for 80 units and exceeded the allowable number. She explained that a 5% variance in the maximum allowed density was requested for the Site Plan Approval Process but pointed that density could be increased by as much as 15% and could propose as many as 88 units.

Ms. Gray stated that the BB zoning district allowed heights of three-stories and 35 feet but included provisions to add four additional stories provided certain requirements were met. She explained that the project utilized a provision allowing the addition of three floors if more than one half of the apartment dwelling units had a maximum of two bedrooms and occupancy by one family, or up to four unrelated tenants, in each with the provision that the structure could not exceed 15 feet per floor. She continued that the proposed structure included 80 two-bedroom apartments of the total 80 units. As such, the zoning code allowed construction of a six-story structure with a maximum height of 78 feet. The proposed project height was 78 feet and met Code.

Ms. Gray reiterated that the application utilized the Site Plan Approval Code Provision, Section 32-97, which provided alternatives for new development or re-development proposals to encourage variety and flexibility, and to provide the opportunity for energy efficient land use by permitting reasonable variations from land use and area regulations. She informed that Site Plan Approval was based upon distinctiveness and excellence of site arrangement and design, including but not limited to common open space, unique treatment of parking facilities, outstanding architectural design, association with natural environment including landscaping, relationship to neighborhood and community, and/or energy conservation as site and/or construction design that the Building Department certified met or exceeded the certificated level as stipulated in the LEED Code. She stated that the applicant requested the Site Plan Approval for relief from apartment unit density, building set back, and side yard. She cautioned that Council needed to consider the size of the requested area regulation exceptions against the standards of distinctiveness and excellence of site design as outlined in Section 32-97, and the developer's site plan approval submission. She indicated the description of how the applicant met the Site Plan Approval criteria and supporting documents could be found in the Department's staff report from March 30, 2021.

Ms. Gray confirmed that the proposed plan conformed to the Comprehensive Development Plan V (Comp Plan) and would not require an amendment to change the designation. The project included apartments, which were permitted in conjunction with any nonresidential uses permitted in the district with a special use permit. She noted that the standard requirements for Special Use Permits stipulated that Council could issue a special use permit providing that the applicants demonstrated that the proposal

would not adversely affect the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and be in conflict with the purposes of the Comprehensive Development Plan of the City.

Ms. Gray added that the design of the building was subject to the requirements of Chapter 27, Appendix XIII, Design Review for Downtown Commercial Properties, and noted that review standards were included in Section D, including appropriateness of design elements and general architectural character. She informed that Council and the Commission could consider comments from the Design Committee and could also consult the design guidelines for downtown Newark. As the Design Committee was not meeting, staff conducted the review as well as the requirements in Chapter 27 and were included in March 29, 2021 memo. In the memo, staff articulated concerns that the project design was too stark and did not complement the streetscape which prompted the applicant to make modifications to the architecture. Staff was in favor of the overall design of the building and appreciated the style of the building facing East Main and Delaware Avenue as well as the incorporation of brickwork and design elements of the current streetscape on the first floor along East Main Street, Haines Street, and Delaware Avenue, and the top floors facing Delaware Avenue. She stated that the building met many of the guidelines for pedestrian conductivity, parking, location for arts and parks, roof and cornice lines, composition of the storefront layer, and relationship to the street but shared that staff felt that the architecture still did not compliment the streetscape and did not meet guidelines for height, width, and overall proportion.

Ms. Gray concluded that following the Subdivision Advisory Committee review, staff suggested that the Commission recommend approval of the project. At the April 6, 2021 Commission meeting, the Commission voted 2-5 to recommend that Council approve the major subdivision with Site Plan Approval and voted 2-5 that Council approve the special use permit. Both motions failed.

The Mayor opened the table to discussion for Council comments.

Ms. Creedy asked how many environmental points the proposal received, and Ms. Gray said that she would investigate. Ms. Creedy noted that the number of units repeatedly changed throughout the process and asked if the current project was for 80 units and Ms. Gray confirmed. Ms. Creedy asked if the parking space waiver was for 52 spaces, not 36, and Ms. Gray confirmed that the Commission granted a waiver for 52 spaces and the project currently needed a waiver for 36 spaces.

Mr. Clifton opened the floor to the petitioners before hearing further Council comments.

Pam Scott, representative for Newark Main Street Company, LLC., was joined by Alan Hill with Hillcrest Associates, project engineer, and Michael Scali, principal for the applicant. She explained that the group developing the project consisted of some of the same members that were involved in the Rittenhouse Station Project on South Main Street which essentially raised the standard for student housing the area. She informed that her client had been working through the approval process for the project for over a year, well in excess of the normal timeframe for such approvals. She warned that if the project was not approved that evening, her client was inclined to pursue his by-rights plan which provided for a building of the same size and shape but without the parking proposed in the plan, at a substantially reduced cost to the applicant. She explained that the applicant spent substantial time working to get to a place to provide a significant amount of parking spaces in the downtown area for the City and wanted to complete the process if possible. She added that it was unfortunate that as part of the approval process, a certain local developer's representative had taken it upon himself to spread misinformation about the project, thereby frustrating the process for her client and the City, in the hopes of having the project turned down. She noted there were businesses in the area that wanted to support the project but were afraid to do so for fear of reprisals from their landlords, the same local developer. She was sure the person would be in the audience that evening to make comments to dissuade the City from approving the project. She found it to be unfortunate and disappointing that another developer in the City felt the need to go to such lengths. She continued that competition in Newark was healthy and added to the diversity of the City and no one developer should believe that they control the landscape to such an extent that they could call all of the shots.

Ms. Scott reiterated that the applicants obtained the Commission's approval for a 60-unit apartment complex with 17,540 square feet of commercial space and subsequently obtained an approval for a parking waiver for the project. The applicant had since revised the plan to provide for 80 two-bedroom apartment units with the same 17,540 square feet of commercial space. She noted that Code permitted 76 two-bedroom units and the applicants requested four additional units, an approximate 5%

density increase, whereas Code permitted up to a 15% increase in density through the Site Plan Approval Process. The applicants also sought relief from the setback and side yard requirements as to a very small portion of the overall building. She reminded that Site Plan Approval was an alternative available for new development and redevelopment proposals to encourage variety and flexibility and permitted reasonable variations from use and area regulations of Chapter 32 of City Code. She continued that Site Plan Approval was based upon distinctiveness and excellence of site arrangement and design, as related to but not limited to open space, parking facilities, design, association with natural environment, relationship with the neighborhood and community, and energy conservation. She stated that while no project was required to address all of the factors to meet the requirements for Site Plan Approval, she suggested that the applicant's project met all of the requirements. She pointed that as to whether site arrangement and design were excellent and distinctive were subjective but offered that the proposed plan did an excellent job of incorporating the existing commercial uses into the façade of the building and adding residential uses above. She revealed that the parking garage for the building was entirely self-contained and hidden from view which was a unique component of the design. She stated that proposal reduced impervious coverage on the site, added landscaping elements, and incorporated energy efficient elements into the design, specifically the applicant agreed to comply with the most recent requirements for energy efficiency which differed from the previous LEED requirements.

Ms. Scott confirmed that the development was in keeping with the surrounding uses and the proposed plan conformed to the Comprehensive Development Plan which called for mixed urban use for the parcels. The applicants also requested a Special Use Permit for the proposed apartments consistent with the Code requirements and findings of the Department. It was determined that the apartments, as part of the project, did not adversely affect the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; would not be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and such use would not be in conflict with the purposes of the Comprehensive Development Plan. She argued that the project provided a significant amount of new parking spaces in the heart of downtown, which would be made available to the City and that the City would manage, a claim that no other project in recent time could make. The applicants submitted that the required standards were met and requested that Council approve the application as presented.

Mr. Hill began that the project was located along the east side of Haines Street, between Main Street and Delaware Avenue, and was home to the businesses of Starbucks, Del-One, and Duck Donuts as well as the vacated building previously used by Simon Eye and Performance Bicycle. He described current buildings as both tired and old but noted that they were nostalgic for many, so the applicant included many of the nostalgic features in the design. He presented a diagram of the property and informed that during the Main Street Improvement Project and with the loss of the public parking related to the Green Mansion construction, the City approached the applicant with a request to lease the parking. Mr. Scali agreed to the lease for a nominal fee, but the applicant suffered financial loss due to the inability to lease the office space at the old Simon Eye building. Mr. Hill continued that the agreement was still in place and described the parking lot as extremely popular.

Mr. Hill next addressed the parking waiver and parking requirements. He reiterated that although the Commission granted a waiver for 52 spaces, the applicant only required a 36-space waiver for the project configuration while still providing a minimum of 101 public parking spaces. He emphasized that the project was the first in recent times that would provide public parking to be sign-posted and managed by the City. As part of the shared parking agreement with the City, the applicant would provide the signage to City standards and requirements, the parking equipment, and the security cameras which would be monitored by the City's Police Department. He explained that the parking garage would have four levels that would be fully integrated into the building and two entrances. The current Main Street entrance between Iron Hill Brewery and Duck Donuts would remain and the proposal would consolidate the entrances and exits to one central location along Haines Street. He noted the East Main Street entrance made for visible parking access for City visitors and the exit on Haines Street would allow vehicles to leave the parking garage without returning to Main Street, thereby easing the flow of traffic on Main Street.

Mr. Hill explained that the applicant placed great importance on integrating the parking into the building as much as possible and did not want to provide parking at the expense of retail space. He claimed that if the intent was to provide parking for residents but there was not a reason provided for them to be on Main Street, there was no reason for them to be located on Main Street. As such, the applicants located the retail spaces along the frontage of the project, predominantly at the street intersections to create the most desirable retail locations.

Mr. Hill continued that one of the more interesting aspects of the design brief on building was the need to keep and work around the existing businesses on Main Street with the ongoing leases for Duck Donuts, Del-One, and Starbucks. When the applicant began the project, the Department used the interpretation that portions of the building below 35 feet would be subject to zero front and side yard building setbacks which was not an issue for the existing buildings but during the application process, a person outside of the City questioned the interpretation. The City then changed its position such that the applicant was now required to request relief from the building setback requirements as part of the Site Plan Approval. He noted that while the applicant was requesting relief for the building setbacks for street level requirements, the proposal actually provided a sidewalk width of almost 15 feet in front of all the proposed retail spaces. He announced that in line with the Department's previous interpretation of building setbacks, the project complied with the proposed setback requirements in the ordinance that had its first reading earlier that evening. He disclosed that all portions of the building higher than 35 feet would be set back from the property line a minimum of 20 feet. He argued that while some of the property line was aligned with the curb, some of the property line along Haines Street and all of Main Street, the property was closer to the building than the curb line, which made some of the higher elevations building setback in excess of 30 feet from the roads.

Mr. Hill then described the architecture of the building and pointed that the current façade of the Del-One and Starbucks building was extended east along Main Street to include the main entrance to the apartments, Duck Donuts, and the entrance to the parking garage. He stated the applicant proposed to return the look of the building to the original natural brick with smooth stone accents. He reiterated that above the existing buildings, the applicant was able to step the building back, comply with the building setbacks, and provide interest and relief to the proposed building. He maintained that with the different setback and the multiple uses with the building, the applicant was able to provide a design to allow light and movement within the design elements which would not be possible if the building had the same setbacks for the entire height of the building. While the design was more expensive to build, it allowed more character. By designing the building around the original setback requirements, the applicant was able to break the design into different areas to provide different relief to the building in different areas. He revealed that the natural size required for the parking garage allowed for a break along Haines Street where the applicant could significantly change the style of the upper levels of the building compared with the elevation along Main Street.

Mr. Hill repeated that the proposal was the first Main Street project in several years to include a significant amount public parking and did not take away spaces. He reiterated that the garage was located of the center of the Main Street business district. During the first Commission meeting for the project, the Commission asked if the applicant intended to comply with the recently adopted amendment to the 2018 International Energy Conservation Code and the applicant confirmed. Mr. Hill maintained that applicant was still committed to the Code and would be the first project in the City to do so. He repeated that the project would reduce the impervious surface of the property and providing stormwater management to a property that currently had none. As part of the stormwater management design, the project would replace a section of the City's undersized piping along Delaware Avenue and remove a known restriction to the City's stormwater management facilities. During construction, the applicant was required to protect the existing trees along Main Street but would also add trees and landscaping along Haines Street to improve the streetscape. He referred to a comment at a Commission meeting that the proposal included invasive plant species and admitted that while not all of the species were native, he did not believe the Parks and Recreation Department would request that the applicant plant invasive species. He understood that it was the intent of Parks staff to vary the species to provide variety and resistance to disease.

Mr. Hill declared that with up to 180 parking spaces available for public use, the proposal provided a true economic driver to Main Street that no other developer had been able to offer. He maintained that as in the development of Rittenhouse Station, the applicant would raise the level of residential properties available on Main Street and provide the residents with multiple amenities that would include indoor bicycle storage, a gym, yoga studio, shared conference rooms, and work study areas. He continued that in all of the projects, the developer provided independent property managers and would use a national property management company to manage the building on their behalf. With the addition of quality retail spaces that could be leased as single or multiple units, the applicant was improving the standard of the retail spaces available to the downtown location on Main Street.

Mr. Hill stated that as part of the Site Plan Approval, the applicant requested only minor setback relief that was not required at the time of the original submission because of the Department's interpretation of Code provisions. He continued that if the Code amendment recommended by the Commission, which had its first reading that evening was adopted, the applicant no longer required any relief from the setbacks. He noted the parking waiver request was for less than 17% of the required parking and still provided a minimum of over 100 public parking spaces. He reiterated that the building

complied with the number of floors permitted by Code and complied with the BB zoning district height requirements. In return for providing public parking spaces, the applicant requested a density bonus of 5%, or four units, where Site Plan Approval permitted a density bonus of up to 15%, or 12 units.

Mr. Hill repeated that public parking would be centrally located on Main Street with a minimum of 101 public spaces managed by the City with the potential of an excess of 180 public parking spaces. Initially, the 101 public spaces would leave 120 parking spaces for the residents, an equivalent of 1.5 spaces per apartment, which exceeded the current market conditions for apartments located on Main Street. As part of exceeding the 2018 International Energy Code, the applicant would provide electric car charging spaces and, while the project was granted a parking waiver of 52 spaces, only 36 would be counted towards the spaces required for the apartments. As a result, the proposal would reduce the cars that residential tenants could bring to Main Street while providing a minimum of 101 parking spaces to the City.

Mr. Hill added that in addition to all of the public parking spaces, the applicant would install 40 bike racks for public use and another 40 bike racks inside the private areas of the building for residents' use. Since the inception of the project, the developer always intended to be able to provide a significant amount of public parking to the City and provide a much needed to the commercial aspect of Main Street. The project fulfilled the intent with the shared parking agreement that was developed with the City and would provide a minimum of 101 public parking spaces with the potential of public parking spaces in excess of 180 spaces that would be controlled and managed by the City, incorporating the current Passport parking system used by the City. He repeated that the parking garage would have City signage and the City would receive all of the fines generated. He reiterated that all of the signage, Passport kiosks, and security cameras would be provided by the applicant as part of the shared parking agreement and would be provided to the City's specifications. Additionally, there would be security cameras in the parking garage for safety and would be monitored by the Police Department, not by private individuals, as in other developments.

Mr. Hill added that City would also benefit from the project's positive financial impact through increased property taxes, utility income, building permit fees, and post-construction fees generated by parking violations. With high quality retail space, apartments, and parking, the project would be a true economic driver to Main Street that would attract quality businesses to the retail space and boost other local businesses. He maintained that the project would have direct impact to the City's revenue and while the numbers presented that evening showed gross income amounts for the City, the applicant estimated the net increase to the City at over \$300,000 per year with over \$300,000 paid to the City as part of the building permit and impact fees. He pointed that numbers generated in the Department's report showed the amount to be equivalent to a tax increase of 1% for City residents.

Mr. Hill summarized that the project brought the potential for an excess of 180 City-managed public parking spaces, created a new, vibrant addition to downtown Main Street, and would include residential management by a national management company to ensure unparalleled levels of service and support for the residents. He reminded that the developer stepped up when asked by the City to provide a solution for the parking issues created by the Main Street Improvement project, at a significant cost to the developer. He pointed that the project was not the first in the City for the developer and the previous project, Rittenhouse Station, improved and raised the profile for residential apartments in the Newark. He repeated that the project would replace tired, old commercial spaces with new, high quality commercial space, capable of being configured in a variety of ways for today's business owners. He reiterated that the project would be the first to follow the amended requirements adopted by the City to exceed the 2018 International Energy Code and added that the retail spaces and building management would create jobs in the City. He thanked Council for their time.

Mr. Clifton offered the table to Ms. Gray to address LEED questions. Ms. Gray informed that the LEED sheet was on page G-6 in the Department staff report. She referred to Mr. Hill's comments that the project would meet the new LEED Code requirements and asked him to clarify. Mr. Hill explained that when the project was originally submitted, it was under the LEED submission and the Commission asked if the applicant intended to comply with the newly adopted amendments to the 2018 International Energy Code and the applicant confirmed. Mr. Hill revealed the new amendments were significantly more restrictive than what was considered the City's modified LEED requirements. He continued that there was a new section as part of the amended International Energy Code that did not reference LEED requirements and the applicant intended to follow the amendments to standards as required by the City. He confirmed that points were involved, and the system was new, but he could not specify the exact number of points. He emphasized that the points applied to more than just the building and was at a much stricter level that applied to the building and its location. He reiterated that multiple aspects of the project were not included in the previous LEED-like City requirements and were much better for the City. Ms. Creecy

thanked Mr. Hill. Ms. Creecy asked for the document location and Ms. Gray replied it was located in Exhibit G-6 in the Planning and Development Review.

The Mayor opened the floor to Council comments.

Mr. Horning referred to Ms. Scott's comments regarding the by-rights alternative for the same size and shape. He asked Mr. Bilodeau if Code, Section 32-18, BB District Zoning Requirements, indicated that the by-rights would be 35 feet and three stories. He explained he was referring to Code section (d)(4)(a), and continued that he interpreted the language stated three stories or 35 feet but no more than four additional floors, providing that, in sub-section a, the applicant was providing some off-street parking or, in Sub-section c, the applicant had some percentage of apartment dwelling units with a maximum of two bedrooms and occupancy by one family and that apartments with an un-residential use would require a Special Use Permit. He continued that he was trying to understand that the City had one proposal that evening and he did not know that by-right was the same size and shape given the comment. Mr. Bilodeau confirmed that Mr. Horning was correct in a way that the project would not necessarily be by-right and would still require a Special Use Permit for the apartment use and noted that the bar for a Special Use Permit for apartments was not high. He continued that calling the project a by-right application was not 100% accurate but was close if the applicant did not require any other relief from setbacks or parking and only needed a special use permit for the apartments. He reiterated that it was not difficult to meet the requirements.

Mr. Horning asked if the requested parking waiver for 36 spaces was recommended by the Department and wanted to know what assurance the City had that the number was enough. Ms. Gray replied that the calculation was based on the current use so if another use went in, the new use would have to apply for a permit and then comply with the number of spaces allotted to the use or seek a variance for the space or not be permitted to occupy the space. She clarified that every time a tenant turned over, the Department was notified, and the use was reviewed. Mr. Horning asked if there was an option that if there was no workable option to provide more spaces, then the use could occupy the space by paying for off-site parking such as a payment-in-lieu. Ms. Gray confirmed there as an option that within 500 feet of the property, the applicant could ascertain additional parking or obtain a parking waiver.

Mr. Horning asked if the DelDOT Traffic Impact Study was triggered by the project or if the Transportation Improvement District (TID) would apply. Ms. Gray replied that the project did not trigger a Transportation Improvement Study (TIS) and, if the TID had been complete, the project, as with any other project developed in the City, would have been captured. She continued that the idea for the TID that any project, no matter the size, would be captured.

Ms. Hughes asked how the City would know how much parking would be needed with retail turnover and wondered what would happen if the parking spaces were needed by new tenants. Mr. Hill replied that the City had a guide to how many parking spaces were provided for retail spaces and informed that Del-One had a requirement of 16 spaces, but the establishment did not have enough space inside for 16 patrons. He explained that the parking requirements were based around a suburban parking requirement, not downtown. He indicated that the proposed retail spaces, outside of the existing uses, totaled nearly 60 spaces. He continued that the spaces that were restricted as part of the parking waiver were tenant spaces. He reiterated the applicant was providing the parking required for all of the commercial and retail spaces required by Code and the 36-space parking waiver would be removed from the residents, which would reduce the number of cars in the downtown area for residents on Main Street.

Ms. Hughes required further clarification. Mr. Hill explained that the current spaces were allotted to the retail and commercial use of the building. The spaces were designed around a patron driving into the City and using one of the facilities, the spaces were not designed around for someone to visit multiple establishments. He continued that downtown parking requirements were more merged in their use than suburban and noted that if a Starbucks was located on 896 by itself, it would need all of its parking spaces because patrons would be driving to the location whereas the Starbucks on Main Street did not have a drive-thru and everyone walked to the location. He repeated that the project was adding less than 1,500 square feet of retail space and informed that the developer was currently servicing and providing parking spaces for the existing retail space. He stated that the proposed retail spaces actually required more parking spaces than restaurant spaces based on square footage of the areas. He reiterated that even though the applicant requested a parking waiver, the proposal provided more parking to the City. He repeated that 101 parking spaces were allocated to the retail spaces and would be available to the public visiting area establishments, not just the retail located at the property.

Ms. Hughes admitted that she was overwhelmed with the various numbers involved in the proposal and referred to Ms. Gray's explanation of the ordinance that allowed more height and asked if

the allowance was based upon unrelated parties in the apartments. Ms. Gray replied that the ordinance indicated that an applicant could be granted up to three additional floors if more than one half of the apartment units had two bedrooms that would be either occupied by one family or up to four unrelated tenants. Ms. Hughes asked who would oversee the adherence. Ms. Gray replied that the occupancy would have to be built as two bedrooms and the two bedrooms could either be housed by a family or by four unrelated tenants and would be overseen by the Planning and Development Department because the apartment would require a rental permit which would allow four people. Ms. Hughes asked if the units had to be fully occupied with four people. Ms. Gray repeated that the rental permit would allow up to four people. Ms. Hughes asked if the ordinance would allow two occupants and Ms. Gray confirmed. Ms. Hughes asked if there were other details in the ordinance with respect to occupancy and Ms. Gray replied no as that was the substance of the ordinance. Ms. Hughes had more questions that depended on other Council comments.

Dr. Bancroft deferred to the expertise of the Planning Department and stated that he listened to the Commission meetings but still not consider the decision to be easy. He understood the developer's motive but stated it was up to Council to determine what was reasonable. He considered the apartments as dorm space based on zoning and while other tenants could live in the apartments, he suggested that 300 students could live in the space. He noted that the property was a large block and wanted to consider ways that the public could enjoy common space. He appreciated the inner courtyards, common space, and bike racks although he suspected the number was not enough. He thought applicant could reference whether bikes could be hung within the units. He did not have an issue with the setbacks and thought applicant had been through the wringer and there was some incoherence on how the process worked. He thought the City was attempting to be consistent. He was pleased with the stormwater upgrade and agreed that the site needed to be upgraded. He appreciated the street trees and the efforts to improve the quality of life for residents and visitors. He noted the Rittenhouse Station was a good example of what the City could hope to see from the applicant. He was sure that the project provided the potential for businesses in the City to get the taxes generated. He was pleased with \$300,000 per year and the presumed rental income although he admitted more factors were at play. He repeated the number of bike racks proposed by the applicant and assumed the 76 by-right made sense from the 1.5 acres as it was a density determination so if Council followed the Commission's action then the request would be to reduce by a few units. He appreciated the applicant's assistance with parking during the Main Street Improvement Project and acknowledged the financial impact. He considered the attempt to come to revenue sharing with the City as a good faith effort. He asked that the LEED report be more detailed because he was not sure how the points were granted, and he wanted the report to be more familiar. He thought it was onerous to achieve gold LEED standard and noted that materials were expensive. He assumed that general public occupancy for the apartments would be one person per bedroom but expected two students per bedroom. He did not think there was a natural environment issue and appreciated that the impervious surface was an attempt to reduce stormwater runoff and that the applicant agreed to install larger piping. He acknowledged that the City needed the capacity increase. He performed his own arithmetic and assumed that if the apartments were occupied by 320 students then the City would only manage around 85 spaces for the public and there would be 16 for the commercial space. He acknowledged the applicant's effort to hide parking was an attempt to beautify the area as was the stepping of the building to hide the upper floors. He reminded that the focus was on density and either the applicant received four more units or the waiver and parking spaces. He intended to defer to the Commission's decision to be more hesitant with the bonus space. He did not think the parties were too far from agreement and appreciated the effort to carefully consider the project.

Ms. Creecy noted that she had reviewed the project with her constituents who were a mix of students and residents. She asked if the building would be open to any potential residents and Mr. Hill confirmed. She asked if the developer considered a conflict of interest between permanent residents and student renters. Mr. Hill assumed that there would not be a conflict because many students did not leave after one year and stayed for two or three years as long as they were pleased with the accommodations and had a good landlord. He stated that although there was a turnover, not every student moved out every year. He thought it was possible that the building could be quiet over the summer for year-round residents and reiterated his belief that there would not be an issue with mixing students and permanent residents. Ms. Creecy noted that the units had two bedrooms but had an occupancy of four people per unit. Mr. Hill confirmed that Code permitted one family or four unrelated tenants per rental permit. Ms. Creecy asked if the applicant considered potential issues with parking if all of the tenants were students and each had a car. Mr. Hill explained that the building would be marketed as very limited parking that would be available separate to the rent. He pointed that while there were 221 parking spaces, 101 spaces were for the public parking garage which left 120 spaces available for tenants to rent at a significant cost in order to dissuade tenants from bringing vehicles.

Ms. Creecy asked if there would be 80 or 82 units and Mr. Hill confirmed there were 80 units. Ms. Creecy believed the project would be an asset to businesses and vendors and appreciated the addition bike racks. She asked if security cameras would be included on the outside of the building and Mr. Hill confirmed that the applicant committed to having some cameras on the exterior of the building at the entrances and various places of concern as indicated by the Police Department. He reiterated that the exterior of the building would be monitored by camera. Ms. Creecy asked if the cameras would be monitored by the Newark Police Department. Mr. Hill replied that at a minimum, the parking garage would be monitored by the Police Department and acknowledged there was some discussion regarding cameras outside of the parking garage but stated that the property management company would monitor the cameras. Ms. Creecy continued that she appreciated trees and landscaping and the adherence to non-invasive plants. She thought the project was beautiful and would modernize the downtown area and wanted to verify that the building was environmentally safe with LEED points that supported the environment. She referred to Ms. Scott's opening comments that if the project was not approved that evening, then the applicant would submit another project that would be more in unison with the current activity on Main Street and would be smaller. Mr. Hill clarified that the project would be essentially the same size without public parking, the four extra units, or the architectural detailing of the current proposal. He explained the hypothetical building would be plainer but would have the same mass. Ms. Creecy asked for the difference in the hypothetical building as opposed the current proposal. Mr. Hill replied that the project would undergo the application process once more but would offer fewer benefits to the City because the project would not include a parking garage, would not have to comply with the energy efficiency to which the current project was dedicated, and would lack the relief included in the current exterior of the building. He emphasized that the hypothetical project would be a larger, plainer building with a flatter façade but would still have six-stories with a parking garage as required by Code without public availability. He stated that the hypothetical building would benefit the developer's retail spaces, not just the City's. Ms. Creecy wanted her constituents to understand the alternative and thanked the applicant for the presentation.

Mr. Lawhorn emphasized that the project was adding a significant amount of parking so from the parking waiver standpoint, the downtown was benefitting beyond whatever would be used by the units. He stated there was a minimum gain of 85 spaces with a high probability that there could be over 100 spaces. He reiterated that from a parking standpoint, the project was a large net gain for the City, so the waiver was not an issue. He referred to the Parking Subcommittee Recommendations that the parking requirements should be lowered and thought it reasonable to agree that the City's downtown parking requirements were too high. He received examples from the City Manager related to the project and noted that Duck Donuts was required, by Code, to have 23 parking spaces which he thought was ridiculous, but the current ordinance approved the lot for 6 spaces. He reiterated that the City required too much parking for a downtown urban environment.

Mr. Lawhorn then shared questions that he received from residents. He asked if any units would be sold or if the entire building was rental units. Mr. Hill confirmed it would be 100% rental units. Mr. Lawhorn noted there was concern about the height of the building and the frontage windows and asked if there was the potential or possibility that objects could be thrown from the windows or if they were sealed or had a preventative window dressing. Mr. Hill explained that the windows would be fixed for the safety of the tenants and public. Mr. Lawhorn asked how the building would be lit at night and Mr. Hill referred to the depiction on the last slide of the presentation which showed how the building would appear at night. He continued that modern lighting systems allowed for alternative lighting choices but was intended to highlight the details on the building. Mr. Lawhorn encouraged the developer to work with the City on managing the visual aspect at night to address resident concerns and Mr. Hill confirmed. Mr. Lawhorn asked for clarification on indoor bike parking. Mr. Hill replied that the community space inside the building on each floor would include a series of rooms dedicated to bike storage which included bike racks on the walls with the ability to lock each bike. The tenants access the storage rooms directly off of the elevator. Mr. Lawhorn extensively interacted with the community regarding the project and found a small number of residents who opposed the project based on size, a smaller group who fully supported the project as a great addition to downtown, and he assumed the majority had mixed feeling but provided constructive feedback that would carry into future zoning conversations about improving the Code to provide better guidance about what was desired for Main Street. He reiterated that the majority of the residents supported the project but the primary complaint from residents was the desire to create more student apartments downtown so they would not move into the neighborhoods. His personal opinion was that the building was large although it was code compliant. He considered the shadow cast on Haines Street and how Little Goat Coffee would lose sunlight but would likely gain businesses from the new tenants. He agreed that the revenue generation was a positive factor and estimated \$80,000 between taxes and utilities based on the Planning Report. He agreed that the parking garage provided potential gain as did the first-year construction fees. He repeated that parking was a positive factor and reminded from his previous comments on other projects that he wanted to have smaller parking minimums which

translated to smaller building, but the location of the proposal and the need for obvious parking made sense. He repeated that the majority of feedback he received emphasized that the apartments provided 80 units that would not be located in residential neighborhoods. He thought the project highlighted Code items that required review, including defining unit, revisiting parking requirements, and creating architectural standards for downtown. He admitted that although the building was large, it was pleasing to the eye. He also wanted Council to be involved earlier in the process so that residents could provide feedback earlier and the developer would be privy to said feedback from Council and residents. He wanted to reduce staff's time and effort to get a project through which would reduce the cost to developers.

Mr. McDermott agreed with previous Council comments and shared constituent feedback that student housing was in demand and UD demolished numerous dorms which forced the need for student housing. He believed that student housing should be centrally located to prevent student sprawl towards the outskirts of the City. He emphasized that students would inevitably come to the City and needed housing but would likely choose to live in the downtown area. He also shared that he would prefer not to live next to a frat house in the Hunt at Louviers. He also heard constituent complaints that the building did not fit in the downtown and did not match other buildings, but he argued that just because the building was larger than what residents preferred, it was code compliant. He revealed that it was not legal to vote against the building based on size nor was it appropriate to vote against the project if the developer came in good faith the City with a plan that passed the processes and Code. He admitted that he took issue with Ms. Scott's slightly threatening comments but understood their origin.

Mr. McDermott asked for a description of the interior of the apartments and wanted to know if it was possible to transition them to family units if UD opted to rebuild dormitories. Mr. Hill replied that while the apartments were all two bedrooms for four occupants, the exterior, hallways, elevator, and stairwells were all structural and the developer could reconfigure the interior of the building into numerous ways. He noted that changing the units from two to three bedrooms would require Code relief because the density required by BB zoning did not allow for more than two-bedroom units. He confirmed that the units could be reconfigured and if the City changed density requirements in the Code, the building could be retrofitted to remain current. He reiterated that the buildings were set up to be easily reconfigured around the central core and outside of the building. He continued that the original application for 94 units had the same façade which proved that the interior of the building could be reconfigured for a various purposes and was a long-lasting building that would not need to be demolished when two-bedroom apartments were unnecessary. He confirmed that the developer had flexibility in the design and construction to keep the building current. Mr. McDermott asked for the location of the storefronts and if any were located along Haines. Mr. Hill replied that from the parking garage to Delaware Avenue and around the corner onto Delaware Avenue would be retail space as would from the parking garage to Main Street. He clarified that either side of the entrance to the parking garage would have retail space and the existing Main Street retail spaces would remain. He considered the proposed plan would be more functional to people's needs. He repeated that the space would be flexible and noted that the current space between Starbucks and the parking garage was four individual spaces but if a retailer wanted to use all four spaces at once, the developer would be able to combine the area. He continued that the retail would be located on the three sides that faced the road except for the parking garage.

Mr. McDermott said that he tended to agree with the arguments that the building did not fit in with the downtown but reiterated it was a separate issue that Council needed to address if the project was not the type that constituents supported.

Mr. Clifton reminded that there were many iterations of the project and he commended the developer for understanding some of the more overarching issues and working to address them. He stated that aesthetics was a cause of continual concern and he credited developers for giving the City products that were, in some cases, over-the-top, specifically Chris Cochran's project on South Chapel with turrets on the end and New York style walk-ups. He noted that the paradigms in the student market shifted through desires of parents and students who wanted newer, safer, secure homes. He viewed the project as a response to the market. He referred to complaints that buildings in the City looked similar and argued that the project differed from the rest. He found the building to be pleasing and likened the façade to a timeless European design. He recalled past discussions about persuading developers to stop using Dryvit, a plain, limestone coating, and Newark was a better place for the effort. He revealed that he voted against more than one project in recent times and explained that neighbors in the area would receive parking if the project was approved and many were pleased with the prospect. He estimated there were 1.5 parking spaces per unit which he viewed as a good compromise because the tenants had the right to purchase additional spaces if they wanted to bring their vehicles.

Mr. Clifton referred to comments about the historic nature of some areas but said that the former President of the Newark Historical Society explained there was a clear difference between historic and

nostalgic. He agreed that parents were seeking to get students into smaller units that were more manageable, and students valued their privacy and independence to the point that they were willing to pay a premium. He assumed that the density of four occupants per two-bedroom unit felt well in the BOCA and IBC standards. He indicated that there were single-family rental homes in the City that placed interior furniture on the porches and noted that it would be impossible to do with new apartments. He continued that the apartments were better managed in some cases, addressed quality of life concerns, and had fewer Police calls than other units. He remembered instances when there were three or four parties in the Police queue with complaints generated from fulltime residents living next door. He agreed with Mr. Lawhorn and Mr. McDermott that students should be clustered downtown to dissuade them from using cars. He referred to comments about when development for apartment units would cease and he estimated that UD reduced 2,400 beds over the last five or six years while increasing enrollment. He surmised the development would stop when banks determined it was no longer financially feasible to build more apartments.

Mr. Clifton reminded Council that the project on the table and the Green Mansion were both 78 feet tall and any argument that one was good while the other was not was hypocritical. He revealed that he was unsure of the true height of the Washington House because the building was two or three feet higher than the proposed build out; the developers returned to Council for three hearings before it was a finished product. The developers came before Council twice because they intended to provide one parking space per unit and, for an owner-occupied building, was not feasible. He reiterated that Washington House had two spaces per unit despite Council's concerns and added that much of the parking that went to the businesses in the building was due to decoupling. He repeated that the current project assured that there would be more than adequate on-site parking and would address the overwhelming need of student housing and parking. He thought the project was a great collaboration between the private and public sector. He informed that the Code allowed for off-site parking up to 500 feet and reminded that Mr. Lang's property next to Klondike Kate's was approved with parking located next to the Newark Shopping Center in the office complex. He emphasized that nothing in the proposal was unheard of or out of the ordinary.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Gianmarco and Gilda Martuscelli, of the Martuscelli Restaurant Group:

"To whom it matters: I am Gianmarco Martuscelli, my wife, Gilda, and I own and operate Klondike Kate's Restaurant on Main Street in Newark. We are writing to show our support for the proposed project located at 141 Main Street and would encourage Council to do the same. This project will be providing much needed public parking to Main Street, which is invaluable to not just our business, but to the other businesses and restaurants on Main Street. We hope Council makes the right decision to support our local businesses and supports this project."

Ms. Bensley stated that Carolyn Bastien, District 6, originally asked whether all of the units were rentals or if some would be available for purchase, like Washington House. In response to the units being all rentals, Ms. Bastien commented that it was unfortunate that 100% of the residents would be transient and also wanted to ask if parking would be at the current rate.

Ms. Bensley shared another comment from Ray Honaker, a former Newark resident currently living outside of City limits, "I belong to a large group on Facebook called What's New in Newark. I suggest that council members Review that site and the many negative comments regarding this project. Personally, I think it is a monstrosity. It will totally destroy the character and charm of the town."

Ms. Bensley read a comment from Aletia Morgan, District 6, "It is overwhelming and against the character of Newark's Main Street. Demographics would argue that the number of students may not keep growing, have we reviewed? And, as an informational question, is the builder required to add EV charging to the parking garage and how many?"

Ms. Bensley introduced Lee Mikles, who spoke for Jim O'Donahue, his business partner.

Mr. Clifton interjected in order to address questions on the parking rate and the EV charging stations. Mr. Coleman informed that the parking rate would be set by the owner of the garage and would likely not be the same as the surface lots. He expected the rate structure would be similar to UD's garages and explained that garages were expensive to build so the developer would set the rates at whatever would optimize revenue. He continued that it was undesirable to set a high rate so there would be empty spaces but also not so low that it was full all of the time. Mr. Hill confirmed there were a minimum of five EV car chargers to comply with the energy code requirements. He continued that the garage would be

pre-wired and, as EV demand increased, so would the chargers. He confirmed the garage would have chargers.

Mr. Clifton thanked Mr. Mikles and returned the floor for his comments.

Mr. Mikles stated that he co-owned Grain Craft Bar and Kitchen on Main Street in Newark with Jim O'Donahue. He confessed that the year had been interesting but highlighted the importance of having a downtown student population. Through the Alfresco Dining Event, the City proved that it was attempting to bring visitors downtown and, while Grain was not geographically able to participate, the owners commended the City for its effort for finding ways to keep downtown on everyone's mind. He reiterated that the developer was the same who constructed Rittenhouse Station which he saw as a top-notch property and was better in technology and finish than what he had when he lived in Towne Court as a student. He thought the developer proved that he could build a quality property. He continued that every unit that was put on Main Street was one less house that would be overtaken by college students throughout the neighborhoods which was a topic of constant concern in Council meetings. He emphasized that the project was proposed by a proven quality developer who illustrated that the ability to provide parking for everyone and also supported Council's efforts to help bring more businesses downtown. He hoped that Council considered the project and recognized that it would help the businesses downtown and keep the students in the area to live, dine, and shop.

Ms. Bensley introduced Ryan German. Mr. German spoke in favor of the project and claimed to have been a proponent of more parking for in Newark for the 22 years that Caffè Gelato had been open at 90 East Main Street. He thought that 1,200 more parking spaces would be appropriate for the City and recalled discussions about adding spaces in Lot #3, behind Caffè Gelato, Lot #1, behind the Galleria, which with the new CVS would be a good idea. He noted the project on Haines Street would be in the heart of downtown and he was pleased that so many spaces would be available. He reminded that during the months that UD was not open, there would be more spaces available. He informed that Food & Brew was an upcoming summer event and the City was also going to attempt a Wine & Dine event but there were days in summer when the businesses could use many more spaces. He asked the developers to monitor the parking lot and open some of the spaces that were allocated to apartments when the majority of the residents were out of town.

Ms. Bensley then introduced Corinth Ford, District 2. Ms. Ford was extremely dismayed by the project and did not feel that the residents had the opportunity to see the project and ask questions directly during COVID. She wanted the vote to be postponed until Council meetings were open to the public and people could attend in person. She found the project and size to be overwhelming. She thanked Mr. McDermott for mentioning that when the applicant's attorney spoke, there was a veiled threat which was most inappropriate that if Council did not pass the project, the applicant would do what he wanted regardless. She argued that the statement was not the way to build friends and influence people and was insulting to the residents of the City. She increasingly felt that the real estate developers were railroading the residents. She argued that the project followed a pattern of urban development which was distressing, where tax-paying residents were pushed out of the City and more and more land was consumed by developers. She believed that when the tax base eroded, more apartments would be constructed, and crime would increase. She could tell by the tenor of the conversation and the comments made by Council that the project (interrupted connection). She maintained that the zoning laws needed to be addressed and noted that 80 units at 4 people per unit equaled 320 people in the space. She did not see much green space. She said it was too late for the project but wanted to see the Mayor and Council address the fact that the town was getting overbuilt and outpacing the infrastructure. As a bicycle rider, she wanted to see cars discouraged in the City, making the left hand turn from Main Street onto Haines was dicey enough and if Council persisted in creating the building, then a light was required to address increased traffic, pedestrian and bicycle safety, or pedestrian crossings. She warned that the intersection was dangerous for cyclists. She was sorry to see the project move forward in some ways but understood that \$300,000 worth of revenue was quoted and was a compelling reason to approve the project. She hoped that the project would stimulate business growth in the downtown area.

Mr. Clifton thanked Ms. Ford and agreed that there was a growing concern on Council as addressed by Mr. Lawhorn, and he did not think a conversation was far off. He appreciated her input.

Ms. Bensley introduced Melanie Milburn, District 2. Ms. Milburn was inspired by and agreed with many comments offered by Ms. Ford, including the light at the intersection. She agreed with Ms. Ford's comments regarding Ms. Scott's threatening tone. She did not care for the size of the building but admitted there were some good aspects. She hoped that Council would be able to limit the height of future buildings even though the City would end up with two huge, six-story buildings within a block or

two of each other and hoped that future projects would be limited to no more than four stories. She asked for how much a unit would rent per month.

Mr. Hill replied that the rent was undetermined but assumed it would be similar to the market rate and potentially a bit higher to attract a higher level of tenant.

Mr. Clifton looked to Mr. Coleman to address the traffic light concern and clarified that Main Street was a State road and would require DelDOT approval for a light. Mr. Coleman confirmed. Mr. Clifton did not think the request was unreasonable.

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

Ms. Hughes added that her constituents expressed opposite comments to Mr. Lawhorn's constituents as far as the building was concerned. She noted that every district had a different make up of wants, needs, and importance, but all could agree that Main Street was an integral part of the City. She continued that constituents felt that they were not given the time or enough notice to address any concerns regarding the project.

Mr. Clifton reminded that the project had been before the Planning Department twice and had been advertised as all other projects. He informed that projects were advertised in the Newark Post and online and reminded that the information was advertised on the Planning Department website. Ms. Hughes agreed and shared the information with her constituents.

Ms. Creecy noted that the developer was trying to attract tenants with money and clout. She revealed that many low-income students entered UD and searched for somewhere to live so she was concerned that if the developer was only aiming for one type of student, the remainder would still occupy residential areas. Mr. Hill understood Ms. Creecy's concern and agreed there were needs for students who did not have the ability to pay top dollar rent in the City. He argued that with the room sharing possible with the four-person, two-bedroom units, the price decreased. He reiterated that the apartments would be open to the students and the tenants could not be discriminated against on the basis of income. He continued that the rents depended on the market forces and the project cost. He admitted that although his answer was not likely one that Ms. Creecy sought; it was truthful.

Dr. Bancroft assumed that businesses might not appreciate seasonal problems. He was pleased that the security cameras and sprinkler would be included. He was unsure if the vote could be tabled and hated to see the project have to start over. He asked if there were bike space/LEED-type features that would argue for adding the four extra units. He did not understand how the LEED points were awarded and asked for clarification. He was disappointed that some of windows could not open and thought it diminished the tenants' pleasure but stated that he appreciated the HVAC energy considerations. He repeated that he deferred to the experts and noted that the Commission addressed the extra four units. He wanted to be consistent with his previous votes to the extent that the City was moving towards future Code items but understood it was another issue. He noted that five EV chargers were the minimum and wondered if the chargers would be available to the public. He admitted that there would be increased traffic for local residents. He noted that the wedding cake setback was only on the back of the building and the main part of the building did not have the feature for visual effect which he would have preferred to have throughout the project. He thought the project conflicted with the Comprehensive Plan regarding green space and did not conform sufficiently with the downtown character. He asked if the developer was considering ways to spruce up the project.

Mr. Horning referred to the lease of the current lot and considered it good will for the developer and the applicant from the City and residents although he did not think it was an appropriate consideration for the vote. He appreciated that the parking waiver was the residential requirement and would be managed by the applicant with regards to renting the spaces, and that the project had the correct required number for commercial spaces.

Mr. Horning wanted to address parts of the Planning and Development Department report. He asked Ms. Gray if the following items had been attended to as they were to be addressed prior to Council consideration: investigation of water and sewer capacity of the existing system and the stormwater system but in particular the RPV Compliance HydroCAD Analysis. Mr. Hill informed that all of the items had been addressed and provided to the City. Ms. Gray confirmed yes after verifying with Mr. Robinson.

Mr. Horning read a portion of Chapter 27 of the City Zoning Code Appendix VIII, Paragraph D, 1 with regards to the height and bulk of buildings. He believed effort was put into the design to conform but felt as pointed out in Mr. Fortner's memo of March 29<sup>th</sup>, 2021 that the overall proportion did not meet

the design guidelines as described. Mr. Horning questioned if all of the updates had been provided to match the items in the memo.

Mr. Horning moved on to questions regarding the subdivision agreement on Page 3, Paragraph Q. As he understood it would be for the installation and maintenance of the electrical service. Ms. Gray confirmed that the applicant would pay for all infrastructure costs. Mr. Horning asked if that would also include stormwater and water service. Ms. Gray confirmed it would.

Mayor Clifton stated if there were no other questions, then he would ask Solicitor Bilodeau to provide final direction to Council on the voting procedures.

Mr. Bilodeau instructed Council that there would be three separate motions; the first would be on the Parking Waiver and if granted, then Council would proceed to the second motion which is for the major subdivision with site plan approval and the third and final motion would be for the Special Use Permit for the proposed 80 apartments. Mr. Bilodeau noted with regard to the Parking Waiver there has been testimony that the Parking Waiver is no longer needed for 52 spaces; but if granted would be for 36 spaces and the fee would be \$167,677.00. The motion for the approval of a Parking Waiver should be referenced in terms of either paying the fee or entering into the parking agreement with the City which would be considered by Council at a Council meeting in the near future. The motion would be to either charge the fee or to enter into this mixed parking agreement that will be considered. Mr. Bilodeau said Council needs to state their reasons when voting on the Parking Waiver and were set forth in the Planning Department's March 20, 2021 report and the basis was also set forth in the Section 32-45 (b)(2) of Code.

Mayor Clifton entertained a motion on Agenda Item 7A, the Parking Waiver

MOTION BY MR. HORNING TO MOVE THAT COUNCIL APPROVE THE 52 PARKING SPACE WAIVER AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET AS A 36 PARKING SPACE WAIVER AND COUNCIL DIRECT THE CITY SOLICITOR TO DRAFT AN ACCEPTABLE AGREEMENT FOR THE SHARED MANAGEMENT OF THE PARKING GARAGE.

Ms. Bensley stated at this point the vote should be to make a motion to approve the Parking Waiver at 36 spaces. The actual agreement and the potential fee in lieu was addressed in the subdivision agreement which is part of the major subdivision approval. She further stated at this point, it should just be a vote with the Parking Waiver and the number of spaces. One the Parking Waiver matter is decided, then any amendments to the subdivision agreement can be addressed, as far number of spaces and costs.

Mr. Horning withdrew his motion.

MOTION BY MR. HORNING, SECONDED BY MS. CREECY: THAT COUNCIL APPROVE THE 36 SPACE PARKING WAIVER AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET

Mr. Horning stated he would approve the Parking Waiver as presented because the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City and will not adversely affect the health or safety of persons residing or working in the vicinity nor will it be detrimental to the public welfare or injurious to property improvements in the vicinity and for the reasons as stated in the Planning and Development report.

Ms. Hughes asked to defer to the next Council member for their vote as she needed further time to consider her decision.

Mr. Bancroft stated for reasons of consistency he would suggest that he does not think this conforms sufficiently to the Comprehensive Plan with mixed use and a little bit of green space and he thinks it also conflicts with the character of downtown and he was voting no.

Ms. Creecy clarified this vote was for the parking. Ms. Creecy said she would approve due to the indoor parking and 101 extra spaces for the public. Mr. Clifton informed Ms. Creecy she would have to state her reasons as Mr. Horning did or just agree with the Mr. Horning's reasons. Ms. Creecy said she agreed with Mr. Horning.

Mr. Lawhorn stated he would be voting yes for the reasons stated by Mr. Horning.

Mr. McDermott said yes for the reasons stated by Mr. Horning.

Ms. Hughes asked which Council member was voting no. Mr. Clifton stated it was Mr. Bancroft. Ms. Hughes said for reasons stated by Mr. Bancroft she would say no.

Mr. Clifton stated the Parking Waiver was approved by a vote of 7-2.

Mr. Clifton apologized for his oversight and said he would vote yes for the reasons stated by Mr. Horning and the vote was 5-2.

MOTION PASSED. VOTE: 5 to 2.

Aye: Clifton, Creecy, Horning, Lawhorn, McDermott.

Nay: Bancroft, Hughes.

**20. 9-B. REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR THE MAJOR SUBDIVISION WITH SITE PLAN APPROVAL OF 1.520 ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AT 19 HAINES STREET AND CONSTRUCT A SIX-STORY MIXED USE BUILDING INCLUDING 17,540 SQUARE FEET OF OFFICE/RETAIL SPACE ON THE FIRST FLOOR AND 80 APARTMENT UNITS ON THE UPPER FLOORS AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET (AGREEMENT AND RESOLUTION ATTACHED) (SEE 9-A AND 9-C)**

**03:20:40**

Mr. Clifton called the question for Item B and asked if there was a motion for approval of the subdivision, and site plan approval.

Ms. Bensley asked to provide some guidance as to the appropriate amendment for the parking waiver fee. Ms. Bensley noted since the parking waiver was changed from 52 to 36 spaces when looking at the subdivision agreement in number 7 and the resolution in item E, it would be appropriate to make a motion to change the \$268,342.00 to \$167,667.00.

Mr. Clifton a motion must be made on the request first before it was amended.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HORNING: TO APPROVE THE REQUEST OF NEWARK MAIN STREET ACQUISITION, LLC FOR A MAJOR SUBDIVISION WITH SITE PLAN APPROVAL.

Mr. Clifton asked if there were any amendments.

Mr. McDermott asked for clarification to the dollar amount of the amended amount. Ms. Bensley provided the number.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HORNING: TO AMEND TO THE MAJOR SUBDIVISION OF 141 EAST MAIN STREET SUBSECTION E AND TO CHANGE THE AMOUNT FROM \$268,342.00 TO \$167,667.00.

Ms. Bensley noted the change would also be made in the subdivision agreement to section 7.

Mr. Clifton stated that the motion passed 7-2. Mr. Bancroft corrected Mr. Clifton the vote is 5-2.

MOTION PASSED. VOTE: 5 to 2.

Aye – McDermott, Lawhorn, Creecy, Horning, Clifton.

Nay – Bancroft, Hughes.

Mr. Clifton stated the next vote would be on the request itself.

Mr. Horning asked for clarification on what matter the vote was on. Mr. Clifton stated the vote was for the request of Newark Main Street Acquisitions Company LLC for a major subdivision plan site approval as amended.

MOTION FAILED. VOTE 3 to 4.

Aye – Lawhorn, McDermott, Clifton

No – Horning, Hughes, Bancroft, Creecy

Mr. Clifton stated there was no point of going on to Item 3C. Mr. Clifton corrected himself to state the item was 9C.

Mr. Bilodeau said there was a vote to amend the subdivision agreement and the resolution and that vote passed 5-2. Ms. Creecy interjected as she believed that Mr. Bilodeau was most likely speaking in reference to her. Ms. Creecy asked for an explanation not the first vote but the second vote.

Ms. Bensley said before Council moves forward if further consideration is desired, a motion to reconsider is required from the prevailing side meaning someone who voted no has to have a motion to reconsider.

Mr. Clifton asked if Ms. Creecy wanted to make that motion.

Ms. Creecy replied yes.

MOTION BY MS. CREECY, SECONDED BY MR. LAWHORN: TO RECONSIDER THE VOTE ON 9B.

MOTION PASSED. VOTE: 5 to 2.

Aye – Horning, Creecy, Lawhorn, McDermott, Clifton

No – Hughes, Bancroft

Mr. Clifton asked the solicitor if it was necessary to re-amend the ordinance or does it carry as stated previously. Mr. Bilodeau said Council did not need to re-amend the subdivision and resolution as that vote still stands. Now a vote was required on the subdivision agreement with the subdivision approval with the bonus for the setbacks and for the 80 units as opposed to 76 units. Mr. Clifton replied it was stated on the agenda as such. Mr. Clifton asked Mr. Horning if he wanted to make that motion. Mr. Bilodeau asked if this clarified things for Ms. Creecy. She stated she believed so. She stated she was voting on the second vote which is the subdivision which is the structure that is being built. Mr. Clifton stated this was correct and as amended. Ms. Creecy stated she was clear.

Mr. Horning apologized and asked Mr. Bilodeau to repeat the instructions. Mr. Bilodeau stated the vote was made to amend the subdivision agreement and that passed 5-2 as did the resolution and now the next one was to approve the subdivision plan with the site plan as amended for this building with 80 units and with a setback relief that has been requested. That is the motion that is presently before Council for vote.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO VOTE FOR THE SITE PLAN APPROVAL WITH REGARDS TO THE 80 APARTMENT UNITS AND THE SETBACK RELIEF AS REQUESTED.

MOTION FAILED. VOTE: 3 to 4.

Aye – Lawhorn, McDermott, Clifton

No – Horning, Hughes, Bancroft, Creecy

Mr. Clifton asked Mr. Bilodeau if there was any point moving on. Mr. Bilodeau replied no there was no point in moving on.

**21. 9-C. REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR A SPECIAL USE PERMIT FOR 80 APARTMENT UNITS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET (SEE 9-A AND 9-B)**

**03:31:04**

*(Secretary's Note: As the preceding vote for item 9-B failed, no vote was taken on item 9-C.)*

Mr. Clifton adjourned the meeting and thanked all for the participation.

**22. Meeting adjourned at 10:29 p.m.**

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

/ns/ts/dmp