

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 13, 2011

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Planning & Development Director Roy Lopata
Assistant P & D Director Maureen Feeney Roser
Chief Paul Tiernan, NPD

1. The regular Council meeting began with a moment of silent meditation and pledge to the flag.

2. **1. ITEMS NOT ON PUBLISHED AGENDA**

A. Public

00:44

Catherine Ciferni, a Newark resident, requested a status report on the installation of bike racks in the downtown. Mr. Sonnenberg will follow up on this with Mr. Lapointe.

3. Amy Roe, a Newark resident, was disturbed by loud noise from an alumni event held near her house on 6/3/11, and she was told this would be an annual event. She said the alumni office indicated the City was on board with the event and gave them an exemption to the noise ordinance.

4. Dawn Calzada, a Newark resident, heard that the City planned to outsource its refuse collection to save money. She was concerned about the possibility that employees might lose their jobs and believed changing a system that worked well was not in everyone's best interest.

5. Tracey Greene and Debra Brenneman, Newark residents, were concerned about outsourcing of refuse services and believed that the City was going to make residents pay for this service. Mr. Markham explained the City was not planning to charge for refuse removal but was looking at outsourcing the service. He said this would only be done if it saved the City a lot of money.

6. Susan Eggert commented on the same issue. She noted that the City was identified as a provider of excellent services, and this was one advantage to living in Newark. If a big savings was realized from outsourcing, she asked if this would be reflected in lower taxes. Ms. Eggert hoped the City did not make any changes to this service.

7. **1-B. UNIVERSITY**

13:25

1. Administration

Mr. Armitage had heard of Ms. Roe's complaint from the alumni office and from Mr. Sonnenberg, and he assured her that a solution would be worked out before next year's event.

Mr. Armitage reported that a live drill was scheduled at Allen Laboratory on July 27th by the University. This high-level bio containment facility was located at the back end of the agricultural campus close to Library Avenue.

8. 1-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

9. 1-C. COUNCIL MEMBERS

15:12

Mr. Temko

- Regarding outsourcing, Mr. Temko said it was in the beginning stages and thus he had not taken a position on it. He explained the City would only make changes to the service if significant, long-term fiscal savings would be realized. He was concerned about employee jobs and said the community would have the opportunity to comment in the future.
- Mr. Temko complimented the new Downtown Newark Partnership website and suggested this would be a good resource for the online community events calendar that he suggested in the past. Mr. Temko detailed the steps needed to move this forward: the City Solicitor had to check for potential issues with the calendar being on the DNP website vs. the City website; at their July meeting the DNP could discuss whether it would be appropriate to have a City-wide calendar as opposed to one exclusive to the downtown; Council discussion could then be scheduled in August.
- Mr. Temko planned to conduct a survey of current Town & Gown Committee members to get their feedback on the purpose and effectiveness of the Committee and determine the need for Council discussion.

10. Mr. Tuttle

- Regarding trash privatization, Mr. Tuttle believed it was difficult to take a position without having all the information available, but he said it would take a lot to convince him to make a change in this area. He felt it was a testament to the service and the workers that residents were drawn to discuss the issue. Further, he felt it was responsible for the City to explore the issue.

11. Mr. Markham

- Mr. Markham noted that Newark Nite went well with good police presence. He also believed that the Great American Main Street Award was another important recognition for Newark.
- Mr. Markham commented that Dover was doing similar things that the City did previously with their budget by eliminating positions and relying more on electric rates.
- A meeting on the Stopyra Tract on Possum Park Road was scheduled at Holy Angels Church at 7 pm on 6/16 to discuss development.
- The Curtis Paper Mill Workshop will be held 6/20 at 7 pm in the Council Chamber.

12. Mr. Morehead

- Mr. Morehead expressed appreciation to Chief Tiernan for a job well done on Newark Nite and to others who helped organize this pleasant family experience.

- Mr. Morehead noted that the City received a lot of good news recently – The Great American Main Street Award and the Bloom Energy relocation. In the local area, the Delaware School for the Deaf had a ribbon cutting ceremony that he and Mr. Clifton attended. Mr. Morehead said the school was one of the premier facilities in the country.
- In reference to outsourcing trash services, he said this was in the early stages, but it was necessary for the City to look at all funding avenues. The emails and phone calls he received were opposed to it, and in his opinion, it would take a high bar to let go of the service.

13. Mr. Athey

- Regarding the outsourcing, Mr. Athey said that the better time to have a conversation would be during the budget approval process. He felt there could be difficult decisions ahead and said there were some long-term trends of concern to him that Council needed to address at their July workshop.
- The Bloom Energy announcement was very exciting news.
- Mr. Athey announced that House Bill 44 was passed which created a check-off box on tax forms for the White Clay Preservation Fund.
- He recognized the excellent police presence at Newark Nite which he said was the best ever.
- Thanked the Police Department for their presence in the Kells Avenue neighborhood and old Newark during the spring.
- Requested that Steve Dentel’s proposal for a Sister City in Bamendjou, Cameroon, be on the June 27th Council agenda.

14. Mr. Clifton

- Mr. Clifton reported that the Delaware School for the Deaf was a LEED certified building with astounding engineering.
- Newark Nite was tremendous, and he appreciated the presence of the police force.
- He congratulated Mr. Funk and Ms. Roser for the Great American Main Street Award and the work of others including the DNP.
- Newark hosted the Special Olympics on June 10th and June 11th, which was a great event well worthy of our support.

15. Mr. Funk

- Mr. Funk stated that going to Des Moines, Iowa, for the presentation of the Great American Main Street Award was a very special event.
- The Police Department did an outstanding job on Newark Nite, and the fire police who attended were very helpful with crowd control.
- Regarding trash privatization, Mr. Funk noted that every homeowner in Bethany Beach paid \$200 annually for trash collection.

16. 2. APPROVAL OF CONSENT AGENDA

- 37:13**
- A.** Approval of Court of Assessment Appeals Meeting Minutes – May 23, 2011
 - B.** Approval of Regular Council Meeting Minutes – May 23, 2011
 - C.** Receipt of Alderman’s Report – June 7, 2011
 - D.** Approval of Unicity Bus Service for State Fiscal Year 2011-2012

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

- 17. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
- 18. **4. FINANCIAL STATEMENT:** Next Meeting
- 19. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None
- 20. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**
 - A. **Bill 11-09** – An Ordinance Amending Chapter 22, Police Offenses, Code of the City of Newark, Delaware, By Increasing the Mandatory Fine When the Victim is a Law Enforcement Officer

37:49

Ms. Fogg read Bill 11–09 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11–09.

Mr. Funk explained the bill was intended to make the City’s Code consistent with the State.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 11–07)

- 21. **6-B. BILL 11-10 – AN ORDINANCE AMENDING CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE, BY PROHIBITING THE DISCHARGE OF A PAINTBALL GUN WITHIN THE CITY LIMITS**

38:48

Ms. Fogg read Bill 11–10 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11–10.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

In looking at ordinances from other cities, Mr. Funk said they all seemed to reference paintball gun and paintball rifle. He asked if there was a difference between the two. Mr. Herron was not aware of any difference between them.

By prohibiting the discharging of capsules, Mr. Temko asked if there was the possibility of inadvertently prohibiting other things. Mr. Funk said of the four other ordinances he looked at, none were significantly different.

Mr. Temko pointed out that other communities had privately run paintball facilities and questioned whether by passing this ordinance the City would prevent a paintball business from setting up here. Mr. Markham said paintballs were being treated the same as BB guns, and the ordinance contained specific criteria to be able to use those guns within an enclosed area. Mr. Herron

confirmed that paintballs were being treated exactly as the other devices in the Code.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.

Nay – 0.

(ORDINANCE NO. 11-08)

22. 6-C. BILL 11-05 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS DISTRICT) .85 ACRES LOCATED AT 206, 208, 220 AND 224 EAST DELAWARE AVENUE (SEE ITEMS 7-A AND 7-B)

41:59

Ms. Fogg read Bill 11-05 by title only.

(Secretary's Note: The public hearing was held at this time for the rezoning, major subdivision and special use permit.)

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-05.

Lisa Goodman, Esquire, represented Campus Edge LLC. She reviewed a PowerPoint presentation for the project which proposed retail, apartments and ground level parking. Ms. Goodman explained that the project evolved since it was first proposed and reviewed by the Planning Commission. Modifications were based on comments and meetings with the community and with Council members. However, the project retained its essential features and was consistent with the recommendation of the Planning Department. The site was .85 acres and was zoned BL.

According to Ms. Goodman, the project began as a mixed-use project with almost identical external architectural detail but was one large building rather than two smaller buildings currently proposed. There was an easement through the property which served the Trader's Alley project, the property to the rear. The building was proposed as a five-story structure with a parking garage on the second floor and ground level parking which was to be dedicated to the City. The project received a recommendation in favor from the Planning Department and a favorable recommendation from the Planning Commission. After the Planning Commission meeting, the developer was contacted by a number of community members and had discussions with Council members who raised concerns about the project. The concerns expressed were about density and height. The original building had 39 units and a height of five stories. The new plan proposed had 24 units and three stories.

The next issue regarded structured parking. In weighing the municipal lot versus the building size, it was decided that the building should be smaller, and it was reduced to three stories with parking on the ground floor. In addition, the original parking waiver request for 42 spaces was reduced with the redesigned building to six spaces.

Other comments about the original proposal regarded setbacks. In order to accommodate the parking garage, the building had to consume almost all of the lot. The developer was going through the site plan approval process in the Code which allowed flexibility as to setbacks. The redesigned buildings were fully compliant as to all setbacks.

The final comments were about green space and trees. Two of the three large sycamore trees on the property would be saved, and the green space would be more than doubled (up to 14%).

The proposed development was two buildings with the exterior finish a composition of stone, brick and stucco.

Parking was proposed partially under the building and partially out of the building with some stacked parking in the back to maximize the parking.

Newark's new green initiative required the equivalent of 25 LEED points. The plan for the building would exceed the City's requirements by achieving the equivalent of 32 points.

The proposed rezoning from BL to BB was consistent with the surrounding zoning and the surrounding uses. Regarding the Comprehensive Plan, the project was in Planning District J, which was designated commercial pedestrian-oriented, and Ms. Goodman believed they fit exactly into that category. Density was proposed at 24 units which equated to 28 dwelling units per acre and was consistent with other projects in the area.

Mr. Temko asked the priorities for filling the public space. Ms. Goodman replied they would like to have an eclectic mix of interesting uses that were owner-run. Mr. Temko pointed out that size and price were often possible barriers for locating on Main Street. Kevin Heitzenroder, Campus Edge LLC owner, explained they worked with prospective tenants to accommodate their space needs and would target leasing rates in the \$16-\$18 per square foot range with Main Street charging significantly higher rates.

Mr. Morehead questioned the two sidewalks indicated on either side of the easement. Mark Ziegler, Project Engineer, said there was a sidewalk along Delaware Avenue, and there would be a larger sidewalk with landscaped islands in front of the building and also on each side of the easement. Mr. Morehead was concerned about the sidewalks in light of the Governor's Complete Streets policy. Although complete streets did not apply to an easement, he felt this new project should be fully accessible to all users for the sidewalks from both sides of the easement.

Mr. Morehead asked the distance between the two buildings which Mr. Ziegler said was 34 feet on the ground floor and 24 feet on the second and third floors. Mr. Morehead was disturbed by the fact that on the rendering the buildings were drawn further apart by almost 50% and Council was being asked to make a decision based on that representation. Ms. Goodman explained the rendering was a representative elevation and said the site plan which every Council member had was the operative document. Mr. Morehead said the site plan did not show a sidewalk on both sides as the rendering did. Mike Longo, the architect who did the renderings, explained that he took artistic license to show a converging kind of perspective but that the site plan showed everything.

The Chair opened the discussion to the public.

John Bauscher, a Newark landlord and resident, felt zoning changes should not be done willy-nilly and hoped the public would be given time to provide input on the project. He thought student housing was overbuilt in the City.

Robyn Harland, a Newark resident, said the plan was a contradiction to Newark's Comprehensive Plan which required owner occupancy in the center of the City, that there should be only two unrelated tenants per unit and that parking on the ground floor was a zoning violation. Also, Ms. Harland was unable to find out how many students would be living in the four bedroom apartments. She felt the plan should be sent back to the Planning Commission.

Frank Tolomeo, East End Civic Association, did not like the first plan. He reported that the Civic Association went through the same process with Lang Development and got the building shortened. He thought the second plan was an improvement and appreciated that the trees were saved.

Mark Sisk, Esquire, represented Hessler Properties which owned the property to the northwest of the project. This was a corner property with several businesses and the concern was the contractual obligation to provide tenant parking. Mr. Sisk reported that the developers have already addressed their concerns.

Pamela Bobbs, a Newark resident, thanked Council for helping the developers get together with community members to discuss the project. She credited the developers with good listening, hearing and response to the community.

Joy Scott, a Newark resident, supported the project and thought the developers did an excellent job of addressing the concerns of residents. Ms. Scott felt it was unrealistic to push for owner-occupied units at this time based on the difficulty in getting a mortgage for a condominium. She felt this was decent alternative housing and that the plan should not be turned down.

Glenn Schmalhofer, a Newark landlord, said there seemed to be vacancy problems with some of the surrounding apartment complexes based on his research. He urged Council to step back and do a study of student housing, and he felt zoning changes in Newark got through very quickly compared to the County. Based on expected development at Trader's Alley, he believed the parking situation would have to be seriously monitored to avoid problems.

Lisa Ward, a Newark landlord, emphasized the project should go back to the Planning Commission for review. She agreed that zoning was willy-nilly and said this was a major zoning change with a lot of unanswered questions. One question she could not get answered was the occupancy limits. She felt the student housing market was becoming completely saturated.

Larry Tarabicos, Esquire, represented Gus Tsionas and Angela Tsionas-Matulas, owners of Trader's Alley adjacent to Campus Edge. His clients were not opposed to this project but had concerns based on parking, access and the approval process. His clients planned to build 14 three-bedroom apartments above the Trader's Alley parking lot. The Campus Edge project would have more than adequate parking. Mr. Tarabicos noted that the 24-foot easement was tight. When his clients bought Trader's Alley they reconfirmed the access easement, which was important to the ingress and egress into the Trader's Alley parking lot. Preserving the parking at Trader's Alley was also important to them. Their biggest concern was the stacked, back-to-back parking which he understood from Joe Charma was not authorized by the Code. They did not think this design would work. Further, they took issue with the way the commercial parking for the project was calculated. There was 5,000 square feet of retail space with only five parking spaces proposed and no accommodation for employee parking. He felt that if there was not enough parking available on the site, the Trader's Alley parking lot would be impacted. Regarding the process issue, Mr. Tarabicos thought it was inappropriate for Council to vote on a plan that had not been seen or commented on by the Planning Commission.

William Rhodunda, Esquire, represented Main Street Court LLC. His clients were primarily concerned about the processing of this plan. Mr. Rhodunda said the second plan was much different than the plan submitted to the Planning Commission. In particular, the main selling point of the first plan was the municipal parking lot which he said was the reason it received a 4-3 vote. In regard to the parking waiver, the project was short six spots. However, there was a provision in the Code giving a credit of twelve parking spaces for

what existed on the property today. The grandfathering of those twelve spots did not make sense to him because the existing developments would be demolished. Although his clients were not opposed to the project, he pointed out that a rezoning in NCC takes months, if not years, while the rezoning for this project could take about two weeks. Mr. Rhodunda believed the core district rules regarding owner occupancy should apply for this land. He said in looking at the March 1, 2011 Planning Commission minutes it was not obvious that this was a project for student housing, which was an important issue. He questioned how Council could render a decision on this plan until all issues were vetted at the Planning Commission level.

Robert Persak, a Newark resident, said a number of Washington House residents were concerned about the original proposal and voiced concerns to their Councilman. Campus Edge LLC was amenable to making a number of changes that were important to them, the biggest being density. Although they originally went in feeling the project should be owner occupied, realistically they did not feel if it was feasible at this time. They liked the overall concept of the project and were favorable about going forward.

Scott Godin, a Newark resident, was shocked at the large size of the project in its first form. While he thought the new proposal was better, he was disturbed by the number of building projects going up in the area and said if the trend continued, Newark was going to look a lot more like downtown Wilmington. He felt there was already sufficient student housing in the area.

Chris Locke, business owner, resident and general counsel to Lang Development, said competition was good because it made better business owners and better landlords. The prestigious national award won by the City resulted from all the great accomplishments over the last 13-14 years to make Main Street not only a destination for restaurants and shopping but for living as well. Lang Development had 200 Main Street units which he thought made them the biggest landlord for apartment rentals. Their vacancy rate for next year (starting June 1) was four available units which he expected to lease within several days. According to Mr. Locke, the apartment owners with vacancies were either not running a good business or had not upgraded their properties. In regard to targeting downtown apartments to student housing, landlords were not legally able to rent exclusively to University students. Although the market may dictate students to be the renters right now, that does not mean they will be the renters in the future. As far as concerns expressed about vacancies, Mr. Locke said when it came to Main Street and East Delaware Avenue, there would not be vacancies and this would be a highly desirable product. He welcomed the competition which would make Lang Development step up their game even more and urged Council to support the project for the benefit of Main Street, Delaware Avenue and the City at large.

Kenneth Smigelski, a Newark resident, felt there were quite a few empty stores on Main Street and said there were a lot of apartments with For Rent signs. He felt this new project would just add to the vacancies.

Shawn Tucker, Esquire, represented the applicant. He distributed handouts to Council and addressed several key points that were made:

Send the project back to the Planning Commission: By Code this plan was not required to go back. In light of the significant reductions in density and height, he did not believe the applicant should be penalized. Council had the power to make amendments if they agreed with them. Some examples of past practice where material changes were made and the application did not go back to the Planning Commission were CVS and Washington House.

Cross easement agreement dated July 10, 2007: That agreement was between Schlosser LLC, H. Gibbons Young and Richard Handloff and required Iron Hill to get approval from their neighbor before disturbing their parking lot. That was their problem to work out and Campus Edge LLC did not want to be joined at the hip with them and inherit their problem.

Testimony about whether more rentals were needed: Research on the vacancy rate at various locations showed 100% of units leased. There was a market for these units, and the applicant was comfortable they would be rentable.

Double-stacked parking: Was done in other locations and was not an uncommon concept. This helped maximize a given site, and there was precedent. Under the definition of commercial parking lot, an area for parking of automobiles for storage was permitted by Code.

Grandfathered parking: Part of the parking analysis included the concept of grandfathered parking. This was another concept recognized by the City for some time, and applicants had taken advantage of it because of non-conforming grandfather status.

Willy-nilly zoning: Newark's process was not a simple process, and it was an expensive public process. The applicant had been through the public process and had meetings with residents not required by Code. The Comp Plan was the blueprint for the path forward, and this rezoning was consistent with the plan.

Concerns about tightness of the easement: If a bigger easement was needed, then a bigger easement should be negotiated. The easement Campus Edge LLC was obligated to provide to the property was in writing, was recorded and would be honored. There was nothing on the plan that interfered with the recorded easement on the property. It was a non-exclusive easement for access only, and that was being recognized and honored by this plan.

No municipal parking lot: This was the reason the project should go back to the Planning Commission. The public called for a compromised plan which would no longer accommodate the municipal lot, thus it had to be removed from the plan.

Parking problems: Issues were caused by the unregulated parking behind Iron Hill. Campus Edge LLC did not create the problem and did not intend to make it worse.

There being no further comments, the discussion was returned to the table.

Mr. Temko asked what conversations occurred with the current tenants. Mr. Heitzenroder replied that they reached out to existing tenants, and several expressed interest in staying on.

Mr. Temko saw bike racks on the landscaping plan. He asked if there were accessibility issues from varying directions. According to Mr. Ziegler, there were no access issues, and the access would be far better than what it was today and a lot better than the access at Trader's Alley. Mr. Ziegler confirmed there was a flat access into the commercial space.

Mr. Athey asked Mr. Ziegler to confirm for the record the distance between the two buildings as there were questions about clearance being adequate for large vehicles to access Trader's Alley. Mr. Ziegler advised the maximum size of the easement permitted by the private agreement was 24 feet, so that was the parameter maximum where traffic was legally permitted to ingress through this property. He added that there were no issues with delivery trucks being able to maneuver through the parking lot, and there would be more than adequate clearance to pass under the overhang.

Mr. Athey felt the occupancy issue should be addressed. Mr. Heitzenroder asked Council to consider the track record with their projects. The vast majority had no occupancy restrictions placed on them, although they used a formula to self-limit the number of occupants in their units. Further, the ICC Building Code followed by the City limited the occupancy based on square footage of units. After discussing formulas used to restrict other projects, Mr. Heitzenroder agreed they would limit the occupants to 140 tenants.

Mr. Morehead felt this proposal did not meet the Comprehensive Development Plan which required owner-occupancy in this area. The Subdivision Advisory Committee proposed and the Planning Commission approved and forwarded to Council the recommendation to limit the occupancy to two unrelated tenants per unit. He said this was the public's will during the writing and development of the Comprehensive Plan and proved to be the public's will on March 1st at the Planning Commission meeting.

Mr. Athey thought it was important to get Mr. Herron's comments on record about returning the project to the Planning Commission. Mr. Herron advised there was nothing in the Code that required a submission back to the Planning Commission after a plan which was already approved by the Planning Commission was modified or amended. Section 27-21 (b) (2) (e) contemplated a situation where the plan was amended or modified and then went directly back to Council. Furthermore, there was nothing in the Code that prohibited Council from sending it back to the Planning Commission if they believed it was appropriate to do so.

Mr. Clifton said this had been a long process and had taken on a life of its own. He would not have approved the original plan but felt the willingness to compromise was unparalleled with any issue that had come before Council. He would support the project based on the small parking waiver, the design of the building, the constituent support in his district, and LEED certification. He thought this was a good addition to the community that fit well under its current plan and believed the zoning change was consistent with the entire block.

Mr. Athey complimented the developers for working with the community and making multiple concessions. Based on the Solicitor's advice, he was comfortable with the process. Regarding the vacancy rates he thought Council should give this some consideration in moving forward. He intended to support the project because it made the whole block consistent zoning, he felt this would provide a needed facelift, competition was good, this continued to raise the bar, and shooting the project down with the applicant's record of quality projects would be a disservice to the community.

Mr. Morehead said the building was always proposed as being aesthetically wonderful. He commended the developers for listening to the public and accommodating the changes asked for by those folks. He agreed with Mr. Athey that the zoning for the block should be BB and from that perspective, this deserved to be BB as well. He would be offering an amendment about the sidewalks and would be supporting the project.

Mr. Markham saw more community input on this project than what normally came before Council. He said anybody who was concerned about the double parking should check out Schilling-Douglas beauty school on Amstel Avenue where they were parked either triple or quad deep when they did their student change on a daily basis. Mr. Markham would support the project because he was pleased the applicant changed the design from five stories to three, the easements were better, the parking waiver came down, the developers made major changes that worked for the residents, and he thought it fit the zoning.

Mr. Tuttle said it was clearly established that the zoning around the property and the balance of the block was BB, and it seemed appropriate to him to rezone the parcel to that same zoning. He thought a good way to describe the process was responsive, and if the second plan had been brought to the Planning Commission, he guessed the vote would not have been so close. He saw no reason to delay at this point. Regarding the stacked parking, he said this was done in commercial lots in Wilmington on a daily basis and on every single driveway in his development every day, and he thought it was a much better use of space. He supported the project.

In regard to the process, Mr. Temko said the Fifth District Planning Commissioner had strong concerns regarding the project and about it leaving the Planning Commission at the time it did. She felt that it was not a stand-alone project and that there were other projects coming up that would influence this project. Further, there were unanswered questions regarding the second floor parking. He thought the changes made took care of those concerns. Regarding the zoning issue, he felt the rezoning made sense because this was part of the central business district and it conformed to the Comprehensive Plan. He said local governments often change zoning as long as it was in compliance with the Comp Plan, and he did not hear any substantive arguments about why BB was the wrong zoning.

Mr. Temko said it was difficult for him to come to a decision on the major subdivision and special use permit. In terms of best planning practices, there were some areas where the plan was lacking in visionary land use practices. A number of the changes were made from community involvement which he thought was an essential part of the process. He also thought this plan provided an opportunity to use the space flexibly to attract independent boutique retailers. He commended the developer for trying to be a leader by exceeding LEED requirements. Mr. Temko thought there were some unique aspects of the project that would benefit the City, and he would support the project.

Mr. Funk said he was not pleased about more student housing downtown and when he received the plan, he was disturbed by the density and size of the building which he felt was out of character with the area. However, he believed the developer did the right thing in listening to the community and incorporating their ideas. In regard to the zoning, Mr. Funk said the rezoning was appropriate since everything around it was BB, and he would vote for the project.

Mr. Morehead suggested amending the Agreement and Resolution to extend the sidewalk on both sides of the easement. However, it was noted that an amendment was not required, and changes to the sidewalk as agreed upon by the developer would be shown on the site plan.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 11-09)

23. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A.** Request of Campus Edge, LLC, for the Major Subdivision, for the Redevelopment of the .85 Acre Properties Located at 206, 208, 220 and 224 East Delaware Avenue, In Order to Demolish the Existing Buildings on the Site and to Construct Two Three-Story Mixed Use Buildings with 4,480 sq. ft. of First Floor Commercial Space and 24 Upper Floor Apartments, to be Known as Campus Edge
(Resolution & Agreement Presented)

37:49

(Secretary's Note: The public hearing for this item and the Special Use permit were held under 6-C – see item #22. The following Motions were made under 6-C.)

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE SUBDIVISION AGREEMENT AND RESOLUTION BE APPROVED WITH THE AMENDMENT THAT THE OCCUPANCY WAS NOT TO EXCEED 140 PERSONS.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: THAT THE SUBDIVISION AGREEMENT AND RESOLUTION INCLUDE A REQUIREMENT THAT THE BUILDING ACHIEVE A MINIMUM OF AN EQUIVALENT OF 32 LEED POINTS.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

Under item a) of the Resolution and item 5 of the Subdivision Agreement, Mr. Funk suggested adding **“and construction”** to the first sentence so that it read, *“The Developer agrees that the architectural design **and construction** of the proposed building on the Site shall be consistent on all building elevations visible from public right-of-way.”* It was the consensus of Council to include this wording.

(RESOLUTION 11-G)

24. **7-B. REQUEST OF CAMPUS EDGE, LLC, FOR A SPECIAL USE PERMIT TO PERMIT 24 UPPER FLOOR APARTMENTS IN TWO THREE-STORY MIXED USE BUILDINGS TO BE CONSTRUCTED AT 206, 208, 220 AND 224 EAST DELAWARE AVENUE, TO BE KNOWN AS CAMPUS EDGE**

37:49

(Secretary's Note: The public hearing for this item and the major subdivision were held under Item #22.)

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

25. Mr. Clifton thought it was important for Council to have a conversation about the proliferation of apartments in Newark. Mr. Funk agreed it was an excellent idea and believed it was crucial for the City to maintain an image of a balanced downtown. He requested a Council workshop on August 22nd to discuss this subject.

26. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

A. Council Members: None

27. **8-B. OTHERS:** None

28. **9. SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None
29. **Meeting adjourned at 10:18 pm.**

Alice Van Veen
Deputy City Secretary

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