

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
September 14, 2015**

Those present at 5:30 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham (arrived at 5:38 p.m.)

Absent: District 2, Todd Ruckle

Staff Members: City Manager Carol Houck
Deputy City Secretary Alice Van Veen
City Solicitor Bruce Herron
Community Affairs Officer Ricky Nietubicz
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Parks & Recreation Director Charlie Emerson
Planning & Development Director Maureen Feeney Roser
Planning & Development Manager Michael Fortner

EXECUTIVE SESSIONS

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(9) for the purpose of discussing personnel matters in which the names, competency and abilities of individual employees are discussed
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) for the purpose of a strategy session involving legal advice from an attorney-at-law regarding potential litigation

Council entered into Executive Session at 5:30 p.m. and returned to the table at 6:48 p.m. Ms. Sierer advised that Council concluded its Executive Session.

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance.
2. MOTION BY MR. CHAPMAN, SECONDED BY MR. GIFFORD: TO REMOVE ITEMS 10A-1, DISCUSSION OF AND POTENTIAL VOTE ON NEWARK COUNTRY CLUB PROPOSAL, FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.
Nay – 0.
Absent – Ruckle.

3. 1. **PUBLIC PRESENTATIONS:** None
4. 2. **ITEMS NOT ON PUBLISHED AGENDA**
 - A. Public

04:01

John Morgan, District 1, requested an update from the University representative about the presidential search. He attended the noise workshop which he thought was valuable and inquired about follow up with San Diego to see whether they had any problems with the noise limits in residential neighborhoods at night. Ms. Houck said

nothing was available as yet. He also suggested checking Portola Valley which had the same limits in residential areas and noted it was the suburb immediately next to Stanford.

Mr. Morgan noted that after the workshop, he sent an email to Council, suggesting they purchase noise meters and take measurements in their own neighborhoods to get comfortable with what 40-50 decibels sounded like.

Jean White, Radcliffe Drive, discussed the City's plan to rebrand its image with a new logo. She referenced the signage coming into the City, letters, brochures and business cards which she did not feel should be changed and preferred to keep the slogan "Committed to Service Excellence." Ms. White did not object to changing the logo on the City's website.

Len Schwartz, District 3, encouraged the City to continue the work to amend the accessory use provision of the Zoning Code and thanked Mr. Morgan for his work on this issue over the past year.

Mr. Schwartz commented on a recent front page News Journal article that criticized Newark and the other towns in the Delaware Municipal Electric Corporation. There was an implication of overcharging for electricity and disadvantaging certain businesses that suffered from very high electricity. He considered this article to be unfair, and encouraged the City to vigorously protect its electric service.

5. 2-B. ELECTED OFFICIALS

13:24

State Representative Baumbach discussed item 8C, the proposed zoning change for the Newark Country Club parcel, and noted that residents love the Country Club but fear any change that would sharply increase traffic in the area. He noted it was a bit unusual to have a zoning change proposal opposed by the property owner since the majority of zoning change proposals come from the owner. He hoped the City ensured it was following the rules for such an uncommon step. He suggested that the City consider instituting a traffic impact study requirement for new development projects as is the case in some other Delaware jurisdictions. This would have the benefit of not singling out one parcel and not doing spot zoning. He felt there were further outside-the-box approaches that could be considered and helpful.

Mr. Baumbach hoped the proposed changes in item 6A redefining accessory use and neighborhood would be approved and would help avoid potential turmoil based on the confusing terms.

Since the country club was located in Mr. Chapman's district, he proposed meeting with Mr. Baumbach for further discussion related to zoning changes of the property.

6. 2-C. UNIVERSITY

(1) Administration

15:55

Caitlin Olsen, Assistant Director, Government Relations, reported that Sonia Manzano, (better known as Maria from Sesame Street), would speak on 9/17 at Trabant University Center as part of the University's Latino Heritage Month Extravaganza 2015.

The University's National Agenda Speaker and Film Series events would involve discussions about "Race in America". All events are on Wednesdays at 7:30 p.m. in Mitchell Hall starting on 9/9 and concluding on 11/18.

The Taste of Newark was scheduled on 9/27 from noon to 3:00 p.m. and was a great collaboration between the City and the University's Department of Hotel, Restaurant and Institutional Management.

Regarding the University's presidential search, Ms. Olsen read a note from co-chairs of the UD Presidential Search Committee Terri Kelly and Don Puglisi.

"Dear Members of the UD Community:

We are pleased to share with you an update on our progress in the search for UD's next President. We have made considerable progress and are excited about the pool of candidates we have recruited. Our work will continue on schedule well into the fall semester, with the goal to recommend a list of qualified candidates to the Board of Trustees in early winter.

By way of background, starting in May 2015, we collected extensive feedback from faculty, staff, students, alumni, parents, and members of the community, on the key priorities and challenges facing the incoming president, as well as the key competencies and experiences central to any successful candidate. Through a variety of activities, including open forums, focus groups and one-on-one meetings, we received very thoughtful comments. All input was considered in developing a comprehensive description of the role, available on the Presidential Search website.

Extensive research was undertaken to identify the best possible candidates, including outreach to seek nominations from the UD community and beyond. Members of the Search Committee reviewed full CVs and supplemental materials for over 50 candidates with academic leadership experience from the nation's most pre-eminent universities. Most individuals considered are accomplished academics with significant leadership experience, including sitting presidents, provosts, and deans. This diverse slate of candidates represents a broad range of disciplines, with many candidates having deep interdisciplinary interests and successes.

The committee spent a considerable amount of time reviewing the candidate pool and has now identified a group that will be invited for confidential interviews. Our committee members are enthusiastic about the prospect of meeting these impressive individuals.

Of course, it is never too late for new, strong candidates to emerge, and we will certainly consider new nominees if they are submitted.

Thank you for your strong support and your many insights. We look forward to continuing to update you in the months ahead within the constraints of keeping the process confidential."

7. **2-C-2. STUDENT BODY REPRESENTATIVE**: None

8. **2-D. LOBBYIST**: None

9. **2-E. CITY MANAGER**

19:47

Ms. Houck announced that information related to the RFP recommendation for privatizing the City's refuse collection could be found in the left-hand column of the City's website. The meeting would be held on 9/21 at 6:00 p.m. at the Church of the Nazarene on Paper Mill Road.

10. **2-F. COUNCIL MEMBERS**

20:40

Mr. Markham:

- Noted that former City Manager Kyle Sonnenberg's letter to the editor in The News Journal about municipal electric rates noted that half of the property value in Newark is exempt from property tax. It would be an incredible tax hit if the City had to move to taxes.
- The Newark Shopping Center had its open house, and it was nice to see it paved, striped, and not a hazard to anybody driving through there. He thought they still had some work to do including ADA compliance and asked staff to double-check on this.

Mr. Morehead: No comments at this time.

Ms. Hadden:

- Welcomed the University students back to campus during move-in with Rick Deadwyler. Unfortunately, she is dealing with some behaviors in her district that City staff

and the Police Department are working on with her that will not be tolerated. She encouraged anyone with quality of life issues in her district to reach out to her.

- Attended a workshop on possible revisions to the noise ordinance. She hoped the project would continue to move forward and asked for a status report from staff. Ms. Houck reported representative from Compliance Environmental took the information from the meeting and another date would be set. Ms. Houck had some communication with him about some other things that were not finalized and there was a separate issue for a constituent of Mr. Ruckle being worked on. Proposed dates would be forthcoming.
- Attended the retirement ceremony for long-time Planning Department employee, Elizabeth Dowell. She was a valued employee and would be missed.
- Attended a meeting regarding the UD presidential search with co-chairs Terri Kelly and Don Puglisi, Legislators Peterson and Townsend and Ms. Sierer. There was a good discussion about concerns with the new presidential search, and desires related to the new UD president's talents and qualifications. The group felt it was important that the next president be part of the community and live in the house.
- Hosted a successful meet-and-greet attended by City Parking Administrator Marvin Howard. He addressed a number of questions and problems and she looked forward to follow-up from him.
- Attended to several constituent concerns.

Mr. Chapman:

- Pointed out that the access road to the electric substation at the entrance of Fairfield Crest where it connects to Creek Road is not chained off. There is no blockade to prevent vehicle traffic and there were three separate incidents where vehicles were up there which caused concern to the residents. Mr. Chapman requested staff to respond promptly in installing a blockade to prevent unauthorized traffic from entering this area from Creek Road.

Mr. Gifford:

- In reading the most recent weekly report, he got an update on SevOne from Ms. Houck and Mr. Herron – there was a new data web company and they would install their own power generation on site using a Bloom Box. It was 500 kilowatts which he believed was the municipal limit for self-generation. They initially had a higher number, and he asked if it was a State law or in the Code. Mr. Herron confirmed it was a State law.
- Planned to attend the Taste of Newark this year and was looking forward to Community Day as well.
- Had the opportunity to meet the Acting President of the University. They had a nice, but short, discussion and he hoped to be able to chat with her more, about issues in the City, especially in District 4, because along the Hall Trail there were a couple of large party houses that were pretty out-of-control in the last few weeks.

Ms. Sierer:

- There were two issues on Hidden Valley Drive over the weekend. One was a Parks and Rec concern, and she thanked Mr. Zaleski for promptly taking care of it and keeping the resident informed. The second one was a water leak, and Mr. Kiesel of Code Enforcement promptly attended to that issue. Ms. Sierer commended the prompt and professional service to constituents and noted that both residents reached out to her thanking City staff for their professionalism and prompt attention.

11. 4. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:

- A.** Reappointment of Reid Rowlands to the Downtown Newark Partnership for an At-Large Term to Expire July 15, 2018

30:11

Ms. Sierer reported that Mr. Rowlands was a long term resident, South Main Street business owner and Design Committee member. He had extensive experience in the construction industry. He completed his first term on the Downtown Newark Partnership.

Mr. Rowlands was also involved with Wooden Wheels Bike Shop. He was very involved in the passive home building business, and was interested in having the first passive home or business in the State in Newark, Delaware. Ms. Sierer thought he was a tremendous asset to the Design Committee and to the Partnership.

There were no questions from Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. CHAPMAN: THAT REID ROWLANDS BE REAPPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP TO FILL THE AT-LARGE TERM TO EXPIRE JULY 15, 2018.

MOTION PASSED UNANIMOUSLY VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

12. 4-B. APPOINTMENT OF LEE MIKLES TO THE DOWNTOWN NEWARK PARTNERSHIP FOR AN AT-LARGE TERM TO EXPIRE JULY 15, 2018

31:50

Ms. Sierer stated Lee Mikles is part-owner of the new Grain Craft Bar + Kitchen on Main Street, formerly Mojo's and East End Café. Mr. Mikles has expressed an interest in becoming more involved in the community and in the Downtown Newark Partnership relative to the activities and the events that occur and being a community player.

He has extensive experience in owning small businesses, was part of the lower Market Design District in Wilmington and worked extensively in the community there.

There were no questions from Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. CHAPMAN: THAT LEE MIKLES BE APPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP TO FILL THE AT-LARGE TERM, TERM TO EXPIRE JULY 15, 2018.

MOTION PASSED UNANIMOUSLY VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

13. 5. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

- 1. Delaware Land and Water Conservation Trust Fund Grant Application – Parks & Recreation Director**
Resolution 15-__: Resolution in Support of a Delaware Land and Water Conservation Trust Fund Grant Application on Behalf of the City of Newark to Fund the Bicycle and Pedestrian Bridge on Paper Mill Road Over the White Clay Creek

33:26

Mr. Emerson reported the resolution supported Delaware Land and Water Conservation Trust Fund grant application on behalf of the City of Newark to fund a bicycle-pedestrian bridge over Paper Mill Road at White Clay Creek.

Mr. Markham suggested that the reference to Mr. Emerson in the resolution be changed to Director of Parks and Recreation in view of his planned retirement. It was not a requirement of either of the grants.

Mr. Morehead asked for clarification about the reference in Mr. Emerson's memo to \$1 million project funding and the requirement of a 20% (\$200,000) local match, while the resolution refers to \$800,000 and \$200,000. Mr. Emerson explained the grant from the Feds was \$1 million, and the City was required to provide a 20% match. The cost was not yet known for the project. Mr. Morehead asked why it said in the resolution that the City planned to meet the remaining \$800,000. Mr. Emerson replied \$1 million was what they were looking at for the project. The City's requirement was \$200,000 which would total \$1 million.

Mr. Morehead assumed vehicles would be driven over this to take care of the park. Mr. Emerson said it would be a light mower, nothing heavier. It was not designed for vehicles. This would probably be a ten to twelve foot-wide bicycle-pedestrian bridge. Mr. Morehead, Hadden questioned the strength of the bridge for pedestrians. Mr. Emerson said the engineers were designing it for full occupancy use.

Mr. Morehead noted that the Federal Highway Administration was providing the money and asked if this was the best use of the money for anything the City might need. Mr. Emerson stated that the Federal Highway Administration made that determination. They, like the Governor of Delaware, were committed to alternative transportation opportunities - bicycle and pedestrian. The money would be coming into DeIDOT, similar to the Hall and Pomeroy Trails and would be a City DeIDOT project. Mr. Morehead and Ms. Hadden asked if this would preclude the City from obtaining funding for other bicycle trails for some period of time. Mr. Emerson said it would not. DeIDOT and the Federal Highway Administration like what was being done in Newark so when the City completed successful projects, it made future funding opportunities greater.

Mr. Morehead expressed appreciation for Mr. Emerson's long-standing ability to find grants on behalf of the City.

Mr. Gifford asked for confirmation there were no strings attached to the funding. Mr. Emerson clarified that the \$1 million from the Feds was guaranteed for the project and Newark must come up with 20%. He submitted a grant application for that funding to the Delaware Land and Water Conservation Trust Fund. If that did not come through, the City had to fund the \$200,000 and that amount was in the capital budget. The Federal money would not have to be reimbursed at any level. Ms. Houck added that the Hall and Pomeroy Trails were reimbursable – the City would make the payments and then submit for reimbursement. The millions of dollars spent on both of those were fully reimbursed.

Mr. Morehead asked how long it would take to build the bridge. Mr. Emerson reported that DeIDOT was currently working with their consultant and were doing survey work, historic work, floodplain analysis and abutment placements. That work will take months, and he projected a completion date around the end of 2016 or maybe into 2017 before it would be in place. Mr. Morehead and Ms. Hadden asked if this could be a 2017 capital project. Mr. Emerson confirmed the money had to be in 2016 because it looked like construction would start late that year.

The Chair opened the discussion to the public.

Helga Huntley, District 1, requested more information about the planned project. Mr. Emerson reported a master plan was completed in 2011 for the Curtis Mill property. This project connects Curtis Mill Park and the City-owned property south of the White Clay, which is Kershaw Park. Also part of the master plan was the open field south of the reservoir. He included the footbridge because crossing the vehicular bridge is not safe for bicycles and pedestrians. The sidewalk was very narrow with a raised curb. DeIDOT liked that idea a lot. In fact, part of that process discussed connected a bike-pedestrian bridge to the existing bridge. DeIDOT did not like that idea, so the separated bike-pedestrian bridge was created. The request to the FHWA was then submitted.

AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: TO REMOVE THE NAME OF CHARLIE EMERSON FROM PARAGRAPH 4 OF THE RESOLUTION.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

(RESOLUTION NO. 15-Z)

14. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:** None

15. 7. **FINANCIAL STATEMENT:** None

16. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING**

A. **Bill 15-22** – An Ordinance Amending Chapter 32, Zoning, and Chapter 16, Garbage, Refuse and Weeds, Code of the City of Newark, Delaware, By Adding Definitions Related to Accessory Use, Updating Code Sections Referencing Accessory Use, and Replacing the Term “Neighborhood” with “Surrounding Area”

46:36

Ms. Van Veen read Bill 15-22 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 15-22.

Mr. Fortner introduced the ordinance for changing the definitions of accessory use and neighborhood. Accessory use was defined in the Zoning Code as uses customarily, incidental and subordinate to the principal use or building and located on the same lot with the principal use for building.

Another section said accessory use shall be permitted only on the same lot with the building. The definition for accessory building was attached or subordinate building, the use of which is incidental and subordinate to the main building on the same lot.

Mr. Fortner reviewed the planning process.

On March 24, 2014, Council asked that the Planning and Development Department prepare a report on different definitions for accessory use and neighborhood in the interest of making the definitions more specific and more regulatory. Council's request came about after The Data Centers controversy and a desire to tighten up the language. Words like neighborhood were not closely defined and difficult to define and more consideration of accessory use was needed to avoid possible legal problems in the future.

The Planning Department report was issued on June 13, 2014 and considered over 60 political bodies including counties, local governments and university communities. One of the key takeaways was that most local governments were using similar definitions to those used by Newark. Some variations were also found and examples of those were provided.

Council directed that the report go to the Planning Commission for review. The Commission considered the subject at four meetings, and public input was received. A number of alternative definitions were provided for accessory use and neighborhood. The Planning Department took all of the comments and concerns into account and developed a recommendation that was unanimously approved by the Planning Commission.

Accessory building was amended to include "accessory building or structure" and the revised definition is: “A detached or subordinate building on the same property as the principal building, the use of which is incidental and subordinate to that of the principal building.” Two subcategories were added: Accessory building or structure, no impact, and accessory building or structure, with impact.

The revised accessory use no impact definition is: “An accessory building whose use generates no noise, smoke, dust, odor, or pollution above normal local background levels detectable outside of the property line.” A no impact accessory building shall not be used for commercial purposes, but may be used for a professional office. Backup power generators, residential grills and fireplaces were considered no impact.

The revised accessory use with impact definition is: “An accessory building that does not meet the definition or requirements of an accessory building, no impact.”

It was decided to replace references to “neighborhood” with the term “surrounding area.” Surrounding area was defined as “properties immediately adjacent thereto, and extending 300 feet in any direction from the property in question.”

This was meant to be carried out throughout the Zoning Code which was organized in three parts. The first part of the Zoning Code under the zoning districts would be permitted uses. An accessory use is permitted by right in the Zoning Code. That wording would be replaced with accessory buildings or structures with impact or accessory uses no impact. Regulatory language would not be changed, such as in the case of residential excluding semi-trailers and similar vehicles for storage of property.

The next section was permitted uses in the zoning district with a special use or conditional use. Accessory uses with impact go to Council for approval and require a public hearing.

RD zoning had regulatory language that was redundant to the definition, so it was deleted. Accessory buildings or structures no impact were under the permitted uses by right, so Council approval was not required to, for example, erect a shed, or things that were common in residential areas that were determined to be no impact.

Mr. Fortner pointed out several items brought to his attention by Mr. Gifford.

- Language in Amendment 4 (b)(12) that should be deleted “...to the uses permitted in this section and located on the same lot,”.
- In Section 32-78 the term neighborhood was referred to in the three criteria the applicant had to prove to obtain a special use permit. Changing neighborhood to surrounding area was not recommended there but instead it was proposed to eliminate the word neighborhood in the last part of sections a and b. Mr. Fortner thought that met the intent of the Planning Commission’s recommendation. Mr. Morehead asked for an interpretation from Mr. Herron if that wording that would cover what the City intended in Amendment 20 a and b – the sentence would become “Affect adversely the health or safety of persons residing or working.” Mr. Herron said as proposed, the amendment was a broader standard than “in the surrounding area” and could mean anyone anywhere.

Mr. Gifford addressed amendment 20. During Planning Commission hearings the impact and no impact definitions were changed to anything affecting people outside of the property line. If it had impact, it would go to Council for a special use permit. He thought the neighborhood section in amendment 20 was supposed to be deleted, but instead, it was changed to surrounding area here. That limited Council’s discretion even though the original special use permit applied if anybody was affected outside of the property line. He believed the intent was to take surrounding area out of the special use permit piece while leaving surrounding area in for accessory buildings and neighborhood garages, etc. to keep the 300 foot notice.

The special use permit section (a)(4) of the Code contained notice requirements to properties immediately adjacent to or within 300 feet of the property for which the special use permit was requested. Mr. Gifford wanted to be able to address situations such as a helicopter that created a lot of noise and the landing pad was in district 3, but they fly directly over houses in district 1. This could be addressed as adversely affecting health or the neighborhood and Council would be on solid ground for making that decision. He felt limiting Council’s freedom in making decisions to a smaller area could

present difficulties. Mr. Gifford said this was discussed at the Planning Commission about setting the distance, and he remembered Mr. Fortner saying the distance was not in the discussion anymore for accessory use or building. By changing the language in 32-78, Mr. Fortner thought the intent was that if a special use permit had an adverse impact, then it was supposed to be evaluated for that impact, and that evaluation should not be limited to the neighborhood which was a vague term in this case.

Mr. Markham was concerned that a Court would call this overly broad and would rule that the City could not legislate outside its boundaries. Mr. Gifford noted the Planning Commission had the same discussion and said if there was an adverse impact from the special use permit just outside the property line, Council would get to make a decision. Mr. Gifford did not want to limit Council's ability to decide and Mr. Markham agreed with him. He asked Mr. Herron if he was sure a Court would not say without any type of limit that it would not be considered overly broad. Mr. Herron responded he could not say with certainty what a Court would do.

Ms. Hadden thought the intent was clear as to what was being said. For a special use permit, which is project by project, that if it adversely affects health or safety or is detrimental to public welfare or injurious to property or improvements or is in conflict with the purposes of the Comprehensive Plan, those were all things we were trying to get considered with these changes. She did not see that it would be something to worry about beyond the City's boundaries.

Mr. Gifford addressed amendment 4 on page 2. He explained section (a)(3) crossing out "Accessory uses and accessory buildings customarily incidental to the uses permitted in the section and located on the same lot" goes away for the no impact definition here. On page 3 a new section (b) was made for each residential area, but kept the comment "to the uses permitted in this section and located on the same lot". He said that should have been removed since it was a redundant section. It should be removed from all of the (b) sections including amendment 4 (b)(12), amendment 5 (b)(13), amendment 6 (b)(9), amendment 7 (b)(11), amendment 8 (b)(7), amendment 9 (b)(7) and amendment 10 (b)(7). They were all exactly the same text but were for different districts.

Mr. Gifford referred to the definition of surrounding area on page 2, amendment 2. He did not want to change it but wanted to clarify the definition. He understood "Properties immediately adjacent thereto," but regarding "and extending 300 feet in any direction from the property in question" he knew Council was thinking any property that touched the circle of 300 feet from the border of the parcel if it was an odd shape. It seemed that the individual property had to extend 300 feet in any direction from the border. This language was in other places in the Code but used the word "within" 300 feet instead of extending 300 feet.

Mr. Gifford wanted to make it clearer and proposed "Those properties, any portion of which lie within 300 feet of the property line of the parcel in question."

Mr. Morehead had a problem with that only because if a property was 10 acres and the corner of it was within 300 feet at the far corner of the 10 acres. Mr. Gifford thought that was how it currently worked, it just had to touch. He asked if the whole property had to be inside the 300 feet. Mr. Fortner thought it just had to touch it and that was the affected area. Mr. Gifford did not care how the definition was written, as long as it meant what was intended which is that any property touching that line 300 feet from the property line of the parcel in question falls within surrounding area. Mr. Fortner thought the intent of the Planning Commission was to take the property line 300 feet in all directions.

Mr. Markham asked for the wording from the special use permits notification. Mr. Gifford quoted "Property owners of record according to ownership data available at Newark, whose property is immediately adjacent to or within 300 feet of the property for which the special use permit is requested." The only change was "within". Mr. Markham suggested using the same language, because that was accepted in practice. Mr. Gifford agreed and would change extending to "or within".

Ms. Hadden asked if it was intentional for amendment 1 (1) to say on the same property, but then (2)a. talks about background levels detected outside the property line. Then amendment 4 (b)(12) did not call it property, it called it a lot and amendment 5 (b)(13) called it a lot. All the other amendments called it lots. She asked if there was a difference between the two or if this was just an oversight? Mr. Fortner thought they wanted to go with the term property, but the lot sometimes was already in the existing language. He thought of a lot as a parcel. Mr. Gifford thought in each residential district it used the word lot before, so they kept the same word when they made the b definition. It was coming out anyway in his second amendment.

Mr. Gifford asked for clarification on page 1, why accessory building or structure was a detached *or* subordinate building instead of a detached *and* subordinate building. Mr. Fortner said detached or subordinate was existing language and an accessory building usually was detached or if it was attached it was part of the primary structure and fell under all the regulations of the primary structure. If detached then it fell under a different type of regulation, like a shed could be three feet from a property line. The “or” was intended to be there.

Mr. Morehead noted page 1, amendment 1, (1)a. used the word “detectable” outside the property line, where page 2, (2)a. used “detected” outside the property line. Mr. Fortner thought it should be detectable.

Mr. Morehead asked how “subordinate” in amendment 1, page 1 was defined and had the same question about use in the same sentence. He felt what was decided now would stand for a long time. Mr. Fortner said it was how it was defined in Webster’s Dictionary and thought these definitions cut to the core about the impact. Ms. Feeney Roser explained when the Planning Commission reviewed this they discussed inserting area requirements in one of the versions but thought subordinate was adequate to define a building that was not as large or had as much impact. She felt they believed that detached and subordinate worked, and if it does not work then the rest of the qualifiers to be a no impact use would bring it back in front of Council anyway.

The Chair opened the discussion to the public.

John Morgan, District 1, thought the answer to the question about defining the area which would be affected was in the City of Newark Charter, Article IV, Section 401. He quoted from the General Powers of Council, “The council shall constitute the legislative body of the City of Newark and shall have the power to adopt ordinances relating to the health of the population of the city, or to prevent the introduction or spread of infectious or contagious diseases or nuisances affecting the city, which power shall extend to the area outside city limits and within one mile from said limits..”

He said if other members of Council shared Mr. Markham's concern about the ordinance being overly broad, that Council the ability to regulate nuisances within one mile of the city limits of Newark. Mr. Morehead agreed that was empowering language, but then Council would have to actually do it.

Mr. Morgan asked Council to consider adding the following sentence under the definition of the accessory building or structure, no impact. “The height of a no impact accessory building or structure shall not exceed the height of the tallest principal building on the same lot.” This would address a concern about what would happen if somebody had a two story apartment building, and a 100 foot tall water tower. He said if it is taller than the tallest principal building on the same lot it will have a visual impact from at least one direction.

Ron Walker, District 4, thanked everyone who gave their time and attention to this issue that was so sensitive to so many residents for a long time.

Helga Huntley, District 1, expressed thanks to all those who put a lot of effort into moving these issues forward.

Regarding the discussion of amendment 20 about striking the words in the neighborhood or in the surrounding area of the proposed use for the special use permit, Ms. Huntley pointed out what would be affected when Council was permitted to give a special use permit. In particular, they were not permitted to give a special use permit if such an accessory use affected adversely the health or safety of a person. If the decision was made to restrict that and say adversely affecting the health and safety of persons residing within the surrounding area, that actually increased Council's latitude. Making the language stronger here strengthened the protection by limiting Council's ability to give out special use permits. Ms. Huntley had not heard any reason why this would be overly broad. She felt there was no reason why the City was not allowed to protect anybody in the world. The City was not allowed to regulate what they do but the City was able to regulate what people within the City do that might affect people elsewhere in the world. She did not share the concerns that that would be overly broad and would recommend keeping it as broad as possible and end the sentence after the word "persons". Like Mr. Gifford, she saw it as a second best option including the words "residing" or "working" in the City.

Ms. Huntley said she would like to see some symmetry in the definitions for accessory building and accessory use, in that the accessory use had to be customarily incidental whereas the accessory building had to be just incidental. She did not see any reason why the word customarily should appear in one definition, but not in the other. That would be a recommendation to make those definitions parallel to each other.

Ms. Huntley supported Mr. Morehead's suggestion to be more specific about what was meant by subordinate. In the original document from the Planning Department with the background information about what other municipalities do, several of them were very precise in stating what they mean by the word "subordinate".

In amendment 1 (1) where accessory building or structure is defined, Ms. Huntley supported replacing the word "or" with "and". She did not think it made sense to call a detached building that is not subordinate to the principal building an accessory building.

Mr. Fortner cautioned Council on the height amendment. There was regulatory language throughout the Zoning Code that regulated heights on things like towers, chimneys, etc., so there could be conflicts with a lot of different things in our code. The Planning Commission reviewed height and visual impact and decided that visual impact was not something the City should get into regulating through accessory use.

Mr. Gifford agreed with Mr. Fortner and thought there were enough amendments. He cautioned that a lot of review went into this including discussion about the visual impact piece and stressed the importance of getting what was presented right. Ms. Hadden was also uncomfortable with a height amendment because of unintended consequences and felt it was something that could be pursued later.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO AMEND AMENDMENT 20 a. TO READ, "AFFECT ADVERSELY THE HEALTH OR SAFETY OF PERSON(S)," AND 20 b. TO READ, "BE DETRIMENTAL TO THE PUBLIC WELFARE, OR INJURIOUS TO PROPERTY OR IMPROVEMENTS."

Mr. Chapman was uncomfortable with how broad this motion was and referenced the Charter granting Council general powers within one mile from City limits which seemed reasonable. Mr. Gifford was willing to make amendments but first wanted to see if Council voted this motion down.

MOTION FAILED. VOTE: 2 to 4.

Aye – Gifford, Morehead.
Nay – Chapman, Hadden, Markham, Sierer.
Absent – Ruckle.

Further discussion ensued about revising the motion. Ms. Sierer suggested including the reference made by Mr. Morgan to the Charter. Mr. Markham would include

“within the state of Delaware” because Newark’s municipal boundaries back up to Maryland and could easily cross state lines. His recommendation was to include within the city or within one mile of the boundaries of the city limits within the state of Delaware.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT AMENDMENT 20-a. BE AMENDED TO READ “AFFECT ADVERSELY 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” AND THAT AMENDMENT 20-b. BE AMENDED TO READ “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.”

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT AMENDMENTS 4(b)(12), 5(b)(13), 6(b)(9), 7(b)(11), 8(b)(7), 9(b)(7) AND 10(b)(7) BE AMENDED TO REMOVE THE WORDS “TO THE USES PERMITTED IN THIS SECTION AND LOCATED ON THE SAME LOT”.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT AMENDMENT 2 BE AMENDED REGARDING THE DEFINITION OF SURROUNDING AREA BY REPLACING THE WORDS “AND EXTENDING” WITH “OR WITHIN.”

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT AMENDMENT 1(2)-a. BE AMENDED TO REPLACE THE WORD “DETECTED” WITH THE WORD “DETECTABLE.”

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

Question on the Motion with amendments was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

(ORDINANCE NO. 15-18)

17. 8-B. BILL 15-23 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RM (MULTI-FAMILY DWELLING – GARDEN APARTMENTS) AND RD (ONE FAMILY SEMI-DETACHED RESIDENTIAL) TO RA (HIGH-RISE APARTMENTS) 1.21 ACRES LOCATED AT 163, 171, 175, AND 179 SOUTH CHAPEL STREET AND 52 BENNY STREET

02:08:31

(Secretary's Note: Items 8-B and 9-A were considered together.)

Ms. Van Veen read Bill 15-23 by title only.

Ms. Van Veen reported that at the request of Mr. Prettyman, the subdivision agreement was amended to reflect a change in the project name to "The Heights on South Chapel." Further, there was a correction to the first paragraph, first sentence of the "WITNESSETH" section of the subdivision agreement. It incorrectly stated the developer was requesting a Comprehensive Plan amendment – this was removed from the subdivision agreement.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 15-23.

Hal Prettyman, property owner, introduced Alan Hill of Hillcrest Associates, Joe Charma of Landmark Science and Engineering and the other owners of Wooden Apple LLC, Ruth Ann Prettyman, Julie Ann Prettyman and Ben Prettyman.

Mr. Prettyman used a paper packet for his presentation which was provided to Council. He referred to the Comprehensive Plan map to show recent projects along South Chapel Street – East Village directly across from the proposed project, Continental Court, Courtyard Apartments, Rupp Farms and Holly Woods.

The area was heavily populated by students. Throughout Benny Street and Lovett Avenue, there were approximately 2 to 3 residents living in the area, one of which sits on the Planning Commission and voted in favor of this project.

Mr. Prettyman referred to the site plan which Council saw previously. This project was approved by the Planning Commission three times since 2000. For various reasons of previous owners, it was not built. Mr. Prettyman brought a project forward (with another plan) to the Planning Commission which was approved 5 to 1. He decided to go back to the drawing board and do a different plan and get six votes from the Planning Commission instead of only five.

On the site plan, the building setback for the property to the left was 45 feet off the property line. For the property line to the right, a variance was obtained because it is 15 feet off the line. The original buildings there got a 10 foot variance, so those buildings would be moved five feet farther off the line. There was also a variance for a bump out on the front porch which encroached by about 2 1/2 to 3 feet.

The materials were a combination of stone and siding. Mr. Prettyman said the elevation was exactly the same in the front and back, so it was an attractive looking building on both sides. Changes were possible in some of the elevations – an example of that would be on the side elevation in the upper right hand corner where some of the windows might need to be changed to a different type of window, but the basic building would be the same. The colors would be earth tone but might vary a little from the rendering. The plan was presented to the Design Committee and got a positive review.

Mr. Prettyman noted the departmental review was positive with no negative recommendations. The Planning Commission restrictions were acceptable to them. This was not a change to the Comprehensive Plan (as incorrectly stated in the original subdivision agreement) which called for 16 to 36 units on a one acre parcel – the plan proposed 18 which is at the bottom end in this high-density area.

Regarding the name change from "Pike Park" to "The Heights on South Chapel", Mr. Prettyman said they no longer wish to be affiliated with that name or its history. He also requested a change in the street name of "Pike Way" to "HootieCat Drive" (the name of a beloved family cat). Mr. Markham asked if Mr. Prettyman was serious about the street name change. Mr. Prettyman said he was and that it was difficult to get a name in the County that had not been used – that was how names were approved. Also "Pike Way" referred to a Greek fraternity that was kicked off campus.

Ms. Feeney-Roser reported that the subdivision code was changed several years ago to require that the name be reviewed and put on the plan as it is. On the plan tonight it showed "Pike Way", so if Council did not have a problem with the name (and it did pass 911 review), the plan would be changed to reflect the new name of the development and the street name in order for it to be recorded. If it was not recorded with the subdivision plan, there was a whole process Mr. Prettyman would have to go through to change the name. So Council did not have to do anything with it other than to recognize that he would like it to be named that and that it would be on the subdivision plan as recorded unless Council did have an issue with it. Ms. Feeney-Roser confirmed that it was an internal private drive.

Mr. Markham confirmed that the developer would voluntarily deed restrict to one tenant per bedroom for a total of 90 unrelated. Ms. Feeney-Roser said that was the Planning and Development Department's recommendation, the Planning Commission did not recommend that. They actually said there should be a limit of 96 throughout the development without regard to the number of bedrooms, so you may have 2 in one bedroom, but the total could not be more than 96. Mr. Prettyman agreed to that and also agreed to deed restrict the property so that no more than 18 units could be built there regardless of his subdivision and that they would not be more than four stories in height. Mr. Prettyman confirmed Ms. Feeney-Roser's statement.

Mr. Markham and Mr. Prettyman discussed the end of the building facing South Chapel which Mr. Markham considered the main street. Mr. Prettyman said they planned to do heavy planting on that end similar to what was done at Holly Woods. Another project further down the street did exactly the same thing where the building was pretty flat on that end. Mr. Markham confirmed that all the meters would not be placed on South Chapel. Mr. Prettyman said the Planning Commission direction was that he was dedicated to putting underground in, and the electric would go all the way to rear of the building with the meters on the back.

Mr. Morehead asked if Mr. Prettyman was committed to the garage doors which seemed to be lost in the construction improvement plan. Mr. Prettyman committed to having garage doors.

The Chair opened the discussion to the public.

John Morgan, District 1, discussed the appearance of the sides of the building and thought there could be some improvements made. Ms. Sierer confirmed with Mr. Prettyman that there would be more robust planting than was shown on the rendering and that there would be a grass lawn. Mr. Markham requested that Mr. Prettyman do something more aesthetically pleasing similar to his project on Cleveland Avenue.

Mr. Prettyman noted that he had the support of Mr. Ruckle who was absent from the meeting. The project was in Mr. Ruckle's district.

Mr. Morehead believed this met the Comprehensive Plan and would support it.

Mr. Markham believed this conformed to Comprehensive Plan IV, did not have a negative impact on adjacent and nearby properties and did not conflict with the development patterns and would be supporting it.

Mr. Gifford believed the project met the spirit of Comprehensive Plan IV, especially because it was a change between RD to RM and so he would be supporting this development.

Mr. Chapman also planned to support the zoning change as he believed it was not in conflict with the spirit of the Comprehensive Plan and there were no adverse effects to neighboring properties.

Ms. Hadden would also support this because she did not think it would have a negative impact on the adjacent, nearby properties and because she felt it was not in conflict with the development pattern in the area and it conformed to Comprehensive Plan IV.

Ms. Sierer would also support the project. It had the approval of the Planning Commission and did not conflict with Comprehensive Plan IV.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.
Nay – 0.
Absent – Ruckle.

(ORDINANCE NO. 15-19)

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE RESOLUTION BY APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.
Nay – 0.
Absent – Ruckle.

(RESOLUTION NO. 15-AA)

18. **8-C. BILL 15-24 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RS (ONE-FAMILY DETACHED RESIDENTIAL – 9,000 SQUARE FEET MINIMUM LOT SIZE) TO RH (ONE-FAMILY DETACHED RESIDENTIAL – ONE-HALF ACRE MINIMUM LOT SIZE) 120.391 ACRES LOCATED AT 300 WEST MAIN STREET**

02:36:16

Ms. Van Veen read Bill 15-24 by title only.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO REFER THE PROPOSED REZONING IN BILL 15-24 TO THE PLANNING COMMISSION AS REQUIRED BY CITY CODE.

MOTION PASSED. VOTE: 5 to 1.

Aye – Chapman, Hadden, Markham, Morehead, Hadden, Sierer.
Nay – Gifford.
Absent – Ruckle.

19. **9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT**
- A. Request of Wooden Apple, LLC for the Major Subdivision of 1.21 Acres Located at 163, 171, 175 and 179 South Chapel Street and 52 Benny Street In Order to Demolish the Existing Buildings on the South Chapel Street Parcels and Construct One 16-Unit Apartment Building and Five Townhouse-Style Apartments with Associated Parking to be Known as Pike Place **(Subdivision Agreement and Resolution Attached)**

(See Item #17.)

20. 10. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. Council Members: None

21. 10-B. **OTHERS**: None

22. 11. **APPROVAL OF CONSENT AGENDA**

02:37:24

Ms. Van Veen read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – August 24, 2015
- B. Receipt of Alderman’s Report – August 25, 2015
- C. Receipt of Alderman’s Report – September 3, 2015
- D. Receipt of Planning Commission Minutes – August 4, 2015
- E. Resignation of Sara Jane Spaulding from the At-Large Position on the Community Development/Revenue Sharing Advisory Committee
- F. Resignation of Samuel Burns from the At-Large Position on the Election Board
- G. Recognition of Nancy Targett, Acting President, as the University of Delaware, Office of the President Representative to the Downtown Newark Partnership
- H. ***First Reading*** – **Bill 15-25** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Amending the Pay Grade for the Deputy Director of Finance and Adding the Positions of Communications Manager and Assistant IT Manager – ***Second Reading*** – **September 28, 2015**

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.

Nay – 0.

Absent – Ruckle.

23. Meeting adjourned at 9:35 p.m.

Alice Van Veen
Deputy City Secretary