

CITY OF DOVER PLANNING COMMISSION
MARCH 20, 2023

The Meeting of the City of Dover Planning Commission was held on Monday, March 20, 2023 at 7:00 PM as an In-Person Meeting and also using the phone/videoconferencing system WebEx. The Meeting Session was conducted with Chair Mrs. Maucher presiding. Members present were Mr. Cooper, Mr. Roach, Mrs. Malone (virtual), Mr. Hartman, Mr. Baldwin, Dr. Jones, Mrs. Welsh (virtual), and Mrs. Maucher. Mrs. Denney was absent.

Staff members present were Mrs. Mary Ellen Gray, Mrs. Dawn Melson-Williams, Mr. Julian Swierczek, Ms. Katherine Oehmke, Mr. Jason Lyon (virtual) and Mrs. Kristen Mullaney. Also present were Ms. Melissa Porter, Mr. Dave Kuklish, Mr. Greg Rishel, Mr. Dominic Balascio, Ms. Christina Kelleher, Mr. Kyle Burchard, and Mr. Lacey Holly. Speaking from the public were Mr. Andre Boggerty, Mr. Travis Sudler, Mr. Sean Lynn, Mr. Bill Hare, Mr. James Paige, Reverend Raymond Fisher, Dr. Wilma Mishoe, Ms. Sandra Ryder, Rev. Rita Paige, Mr. Sammy Barrineau, Ms. Michelle Hughes, Mr. Lewis Jackson, Ms. Pilar Sudler, Mr. David Anderson, Mayor Robin Christiansen, Ms. Lisa Dawn Bentley, Mr. Roy Sudler, Jr., Ms. Kaylynn Daniels, Ms. Jean Taylor, Mr. Steven LeBoon, and Mrs. Cassandra LeBoon.

APPROVAL OF AGENDA

Dr. Jones moved to approve the Agenda as submitted, seconded by Mr. Baldwin and the motion was unanimously carried 6-0 with Mrs. Denney, Mrs. Welsh and Mrs. Malone absent.

APPROVAL OF MEETING MINUTES OF FEBRUARY 21, 2023

Dr. Jones moved to approve the Planning Commission Meeting Minutes of February 21, 2023, seconded by Mr. Cooper and the motion was unanimously carried 6-0 with Mrs. Denney, Mrs. Welsh and Mrs. Malone absent.

COMMUNICATIONS & REPORTS

Mrs. Gray provided an update on the regular City Council and various Committee meetings held on February 27 & 28, 2023 and March 13 & 14, 2023.

Mrs. Melson-Williams stated that the next Planning Commission regular meeting is scheduled for Monday, April 17, 2023 at 7:00PM in the City Hall Council Chambers.

Mrs. Melson-Williams stated that the Dover Air Force Base Compatible Use Study as of today was issued as Draft Plan. They will be forwarding more information about the ability to take a look at that Draft Plan. She believes that it is probably going to be posted on project site which is on DelDOT's website under their projects and studies since they are a part of the project team. That item came in late this afternoon.

Mrs. Melson-Williams stated for those Commissioners interested in Downtown Dover, there is a presentation on the *Capitol City 2030 Transforming Downtown Dover* which is the Strategic Master Plan for Downtown. They will be holding a public session on Wednesday, March 22, 2023 at 6PM to be held at the Kent County Levy Court Building which is at 555 Bay Road. If you need more information, check out the website www.downtowndover.com or reach out to the

Planning Office and they will make sure you get the right information about that meeting. The document is also on their website as well.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Melson-Williams presented the audience information on policies and procedures for the In-Person Meeting and Virtual Meeting using the WebEx system.

Mr. Roach moved to move Item #7 up in the Agenda since he thinks a lot of people are here for that application, seconded by Dr. Jones.

Mrs. Maucher asked if she could amend the motion that they complete Old Business first and then move Item #7 up on the Agenda.

Motion was amended to hear Old Business first and then move that Item #7 application (S-23-06) to the first application under New Applications. Motion carried 6-0 by voice vote with Mrs. Welsh, Mrs. Malone and Mrs. Denney absent.

OLD BUSINESS

Requests for Extensions of Planning Commission Approval:

C-21-02 JJ's Learning Experience 2 Child Day Care Center at 756 South Little Creek Road -
Request for one year extension of Planning Commission Approval granted on April 19, 2021 for Conditional Use Application to permit renovation of a 10,111 SF space in an existing one-story 33,143 SF building into a Child Day Care Center to serve 170 children. The property consists of a 2.39 acre+/- parcel and is located on the south side of South Little Creek Road opposite Babb Drive. The property is zoned C-4 (Highway Commercial Zone). The owner of record is Empire Medical, LLC and the applicant is JJ's Learning Experience 2. Location Address: 756 South Little Creek Road Suite 1. Tax Parcel: ED-05-077.00-01-03.00-000. Council District 2.

Representative: None

Mrs. Melson-Williams stated that this is a Request for a one year extension. This was a Conditional Use Site Plan Application. It originally began consideration with the Planning Commission back in March 2021. At that meeting, they conducted a public hearing and then deferred action until their next meeting, seeking some additional information on the project. At their April 2021 meeting, the application was conditionally approved. Since that time, they have actually retained a different engineering firm to work with them because of the extensive DelDOT interaction that was needed for the project site because of the change of use on the property. Entrances on the property had to be looked at more carefully. The Planning Commission did see it in October 2021 for a general revision to the Plan that setup a one way circulation around the plan. The display shows the latest plan version that they received late last week. They have been going through DelDOT submissions in order to design the appropriate entrance improvements to this site. At this point, they are seeking a one-year request of extension to allow them to continue to finalize their Plan in order to achieve Final Conditional Use Site Plan approval and move fully forward with their project.

Mr. Hartman moved to approve C-21-02 JJ's Learning Experience 2 Child Day Care Center at 756 South Little Creek Road for a one year extension based on the progress that they are experiencing and the troubles they have had, seconded by Dr. Jones and the motion was carried 6-0 with Mrs. Welsh, Mrs. Malone and Mrs. Denney absent. Mr. Hartman voting yes; based on his previous statement. Mr. Baldwin voting yes. Dr. Jones voting yes, the applicant is moving forward. Mr. Cooper voting yes. Mr. Roach voting yes. Mrs. Maucher voting yes; as it seems the DelDOT approvals are the last leg for them to be able to start work.

Mrs. Welsh arrived (virtually) at the meeting.

C-21-03 Warehouse Building at College Business Park Lot D – Request for one-year extension of Planning Commission Approval granted March 15, 2021 for Conditional Use Site Development Plan to permit construction of a 9,520 SF one story Commercial Warehouse Building with associated site improvements on a 0.9907 acre +/- parcel. The property is zoned M (Manufacturing Zone). The property is located north of College Road, at the end of College Park Drive, abutting the southwest side of the railroad right-of-way. The owner of record is Stoltzfus LLC (HSM Exchange LLC). Property Address: 1255-1257 College Park Drive. Tax Parcel: ED-05-067.00-02-12.06-000. Council District 4.

Representative: Ms. Melissa Porter, Stoltzfus LLC

Mr. Swierczek stated that this is a Conditional Use Site Development Plan to permit construction of a 9,520 SF one story Commercial Warehouse Building. This is an application that originally came before the Planning Commission at their March 2021 meeting where it received conditional approval. They have received a letter requesting a one year extension of approval from the property owners citing that they have switched engineering firms. While they do not have a specific tenant lined up, they do plan to construct the building based on the plans as approved thus requiring the extension of approval.

Ms. Porter stated that the plans are in motion; they are just waiting for approval.

Mr. Baldwin moved to approve C-21-03 Warehouse Building at College Business Park Lot D for a one-year extension, seconded by Mr. Cooper and the motion was carried 7-0 by roll call vote with Mrs. Malone and Mrs. Maucher absent. Mr. Baldwin voting yes. Dr. Jones voting yes. Mrs. Welsh voting yes. Mr. Cooper voting yes. Mr. Roach voting yes. Mr. Hartman voting yes; based on the progress of the applicant. Mrs. Maucher voting yes; based on the applicant's progress for approvals.

Pending Development Application:

S-23-05 Tidal Wave Auto Spa at 245 N. Dupont Highway - Continued Review of a Site Development Plan and Lot Consolidation Plan for two (2) parcels totaling 2.15 +/- acres at 245 North DuPont Highway. The Plan is to permit construction of a 3,690 SF Car Wash facility, 24 vacuum spaces, and associated site improvements. The properties are zoned C-4 (Highway Commercial Zone). The parcels consist of a total of 2.15 +/- acres and is located on the

northeastern corner of N. Dupont Highway and White Oak Road. The owner of record is TWAS Properties LLC. Property Addresses: 245 and 243 N. Dupont Highway. Tax Parcel IDs: ED-05-068.18-01-13.00-000 and ED-05-068.18-01-12.00-000. *The Planning Commission conducted a Public Hearing and began review of this application at their February 21, 2023 and deferred action seeking additional information.*

Representative: Mr. Dave Kuklish, Bohler Engineering

Dr. Jones moved to continue review on Application S-23-5 Tidal Wave Auto Spa at 245 N. DuPont Highway, seconded by Mr. Baldwin and motion carried 7-0 by roll call vote with Mrs. Malone and Mrs. Denney absent.

Mr. Swierczek stated that as noted, this was a Site Development Plan Application that came before the Planning Commission at last month's meeting. This is also associated with a Lot Consolidation Plan so it is two existing parcels. It is a little under 3,700 SF one-story Car Wash facility and other on-site improvements including 24 vacuum spaces. During the discussions at last month's meeting, there had been some question as to the capacity of the City's current water and wastewater facilities to handle the implementation of this new use on the site. Members of the Planning Commission should have received updated material, one of them being an email communication between the engineer for the project and the City Engineer Mr. Jason Lyon noting that he was satisfied with their projections and the City would be able to handle their water and wastewater needs.

Mr. Kuklish stated that he had nothing to add.

Mrs. Maucher stated that the public hearing on this application was conducting during the meeting of February 21, 2023; therefore, there is no public hearing tonight.

Mrs. Malone arrived (virtually) at the meeting.

Dr. Jones moved to approve S-23-05 Tidal Wave Auto Spa at 245 N. DuPont Highway with the Site Development Plan and Lot Consolidation Plan, seconded by Mrs. Welsh and the motion was carried 7-0 by roll call vote with Mr. Hartman abstaining and Mrs. Denney absent. Dr. Jones voting yes; the concern that she had was addressed in the correspondence that they have received. Mrs. Welsh voting yes; in conjunction with Dr. Jones' comments that the concern was the capacity of the overflow and that has been addressed; so, it sounds like everything has been taken into account and the applicant is well aware of what they need to do. Mr. Cooper voting yes; for all of the same reasons. Mr. Roach voting yes; for reasons previously stated. Mr. Hartman voting; present. Mr. Baldwin voting yes; based on the Report that they received from Wastewater Management. Mrs. Maucher voting yes; based on the Staff recommendations, DAC comments and the confirmation for the wastewater capacity. Mrs. Malone voting yes; for reasons previously stated.

NEW APPLICATIONS

S-23-06 College Road Apartments at Railroad Avenue/Grove Street – Public Hearing and

Review of Site Development Plan for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000. Council District 4. *Waiver Requests: Reduction of Parking Requirement. Consideration of Active Recreation Area Plan.*

Representatives: Mr. Greg Rishel, Pennoni Associates; Mr. Dominic Balascio, representing ownership entity

Mrs. Melson-Williams stated that this is a Site Development Plan Application. This is a project for mid-rise apartment buildings with a total of 385 units. The property is just over 31 acres of land to start with that is zoned RG-5 (General Residence Zone for Mid-Rise Apartments). They are seeking one Waiver Request and that is in regards to a Reduction of the Parking Requirement. This evening the display shows a location map aerial of the area. It is located to the north of College Road and adjacent to the railroad corridor. On the site, you can see that it's four parcels of land that are currently open land, wooded, and have wetland areas. The surrounding uses to the north are the Fork Branch Nature Preserve. To the east across the Fork Branch (creek) is the main campus of Delaware State University. To the south is a residential neighborhood that has a variety of zoning classifications including the RG-5 (General Residence Zone for Mid-Rise Apartments) and other One Family Residence Zones where there are single family detached houses and manufactured home units. To the west across the railroad tracks is the College Business Park which is an industrial/business park with a number of office and other warehouse type buildings. The project tonight proposes construction of the continuation of Raymond Street to the west and then Railroad Avenue to be constructed along the railroad tracks to terminate in a cul-de-sac. These roads are to be constructed to City street standards. Previously, there was an attempt at some Subdivision Waivers associated with the road network. Those waivers were recommended for approval by the Planning Commission and by City Council, but ultimately the action taken by Council was vetoed by the Mayor. The subsequent request to override that veto was unsuccessful so the Subdivision Waivers were not approved. What that means is the streets must be constructed to the City of Dover street standards. That places a limitation on the length of the cul-de-sac street and requires sidewalk on both sides of those street frontages where the property owner has adjacency. Focusing on the development of the private lands this evening, the proposal includes two buildings that would be six stories in height. The first floor of each building is given to a parking level and then floors two through five are a series of apartment units. The apartment units are a mix of studio, one bedroom and two-bedroom units. This project did go through the Preliminary Land Use Services (PLUS) review process with the State. The applicant has provided their response comments to those PLUS comments, and they were made part of the application package for tonight's meeting. There have been a number of applications

in this area that are referenced in our Report. Initially, the tracts of land were annexed into the City in 2006 and there have been various attempts at other development and actually a Rezoning that occurred in 2011 to bring these properties to the RG-5 (General Residence Zone for Mid-Rise Apartments). That RG-5 (General Residence Zone for Mid-Rise Apartments) has a series of bulk standards and for mid-rise apartments, they are required to have a certain lot area per dwelling unit which the project does meet. There are setbacks that are established. There is a requirement that 20% of the total lot area be dedicated to open area and not encumbered by building or parking facilities; and they have met that requirement. The RG-5 (General Residence Zone for Mid-Rise Apartments) also includes parking requirements. The parking requirement overall based on the *Zoning Ordinance* would be a minimum of 2 parking spaces per dwelling unit plus an additional 0.25 spaces for visitor parking. That is a total requirement of 2.25 parking spaces per dwelling unit. With this project, given the number of units that would be a requirement for 867 parking spaces. They have identified on their plan a total of 683 parking spaces and are seeking a Waiver to Reduce the Parking Requirement for the project site. They have provided a letter outlining the details of their request citing the types of units and some comparisons in other jurisdictions to what parking rates do consist of and she imagines that the applicant will expand on that in their comments. The project includes a number of the typical site improvements that are required in our *Zoning Ordinance* including bicycle parking, upright curbing for all of the parking areas and road networks. The main access to the site is off of the cul-de-sac at the end of Railroad Avenue with a second entrance also from Raymond Street on their property which brings you into the parking lot area. The buildings are surrounded by fire lanes which meet the rear emergency access provisions for the site. There are a series of sidewalks that circulate through the parking lot areas and to the buildings and then ultimately link to the recreation areas for the project (that is what is depicted on the screen now).

The green shaded areas are the various components of the Active Recreation for this project site. That Active Recreation Area was reviewed by the City's Parks, Recreation and Community Enhancement Committee last week and they recommended approval following the Staff recommendations and the clarifications that the applicant made in their presentation of the Active Recreation Area Plan. They are required to provide 1.61 acres of Active Recreation Area. They are providing 1.67 acres and it consists of a number of outside amenities including a multi-sport court, a sand volleyball court, a picnic pavilion with tables, a paved walking trail which is along the eastern edge of the parking lot area that then brings you to the wooded walking trail. Along that wooded trail is a series of outdoor fitness stations for use. Additionally, in each of the buildings on each floor, there is a yoga and fitness type game room that is provided on each floor. So, they have a number of recreation amenities to satisfy various recreational needs of their residents at that facility. By reference, she would include the review of the Active Recreation Area Plan in the comments this evening.

The site does include areas that are in the Flood Hazard Area. The City's *Zoning Ordinance* does not allow for development in that area. That is predominantly found in the far eastern reaches of this project site and no development is proposed in those areas. Additionally, there are areas of wetlands and likewise, no development is proposed in those areas. There is a riparian buffer of 50 feet that will be established from those wetland bodies that are on the site either by retaining the existing woodland areas in those areas and also augmenting them with additional plantings. The project includes a tree planting plan. It is required to have 158 trees. The site as shown right

now is showing 268 trees. They are preserving almost 85% of the existing woodlands on the project site as part of their plan development.

With this application, she would reference the DAC Report. It does include comments from the various agencies. Planning Staff has reviewed the plan and identified some items for correction or clarification. They are also recommending approval of the parking reduction for the site and also noting some suggestions for site improvements related to locations of the some of the handicapped parking and bicycle parking. Some of the areas that are adjacent to the parking on the north are to include the recommended fencing along those areas for the Fork Branch Nature Preserve (as recommended by DNREC Staff). There are recommendations that we suggest for the use of native tree species given the proximity to existing woodland that is there. They are also encouraging the project to contemplate the installation of electric vehicle charging stations to plan for future use of amenities. The other agencies providing comments include the Department of Water/Wastewater for the site as it would need to connect to City water and sewer, the City Electric Department, and the City's Office of the Fire Marshal has reviewed the Site Plan and also will ultimately review any building and construction plans as well for fire protection measures. DelDOT has provided comments which include that the application will need to move through their Development Coordination Review process and that DelDOT will be looking at in particular the intersection of College Road and Mishoe Street which the initial connection to the State road network for this project. The project also will be reviewed for sediment and stormwater management planning as really a joint effort between the Kent Conservation District and DNREC because this site is a Brownfield site so there are some additional requirements to manage through the remediation of the Brownfield areas located on the property. So, Planning Commissioners are looking at a Site Development Plan with one Waiver Request that being for the Reduction of the Parking Requirement.

Mr. Rishel stated that he is here this evening with a colleague from Pennoni Associates, the applicant, and also the project architect who can elaborate especially if there is any particular items or questions about the building architecture. As Mrs. Melson-Williams highlighted, this is a by-right use in the RG-5 (General Residence Zone for Mid-Rise Apartments), a permitted use by-right. Given the size of the property and the allowable density, this project is only proposing about 26% of the allowable density of the site. There are floodplains and wetlands on the site and there is no disturbance proposed or development proposed in either one of those areas. As Mrs. Melson-Williams highlighted, they received a recommendation from the Parks, Recreation and Community Enhancement Committee last week. The parking waiver is being respectfully requested; there is a letter in your packets that outlines the analysis behind that. The reduction that they are looking for and the justification for that is based on where Dover's Code bases parking requirements on number of units. They are focusing on providing parking based on number of beds. That was how they looked at their analysis in comparing it to other local municipalities in the area. With these buildings, 86% of the units in these two buildings will be studio or one-bedroom apartments; so, a majority will only be studio or one-bedroom apartments. Planning Staff does recommend approval of the Waiver. While the City of Dover's Ordinance requires 2.25 spaces per unit, they are proposing 1.8 spaces average per unit. They are still providing for some overflow in visitor spacing in that analysis. He will further note that they have looked at an alternative Site Plan and they could pull it up if need be, whereby they can be fully compliant with the Dover parking requirement at 2.25 spaces per unit with the addition of a

structured parking garage onsite. That would go near Building kind of in the front of the site. Not only would they be able to meet the parking requirement, they could exceed it with a six-story structure and still comply with all other zoning regulations. It would actually be able to add up to an additional thirty units of density with that. The applicant does not want to utilize that option. They are happy with the number of units being proposed with the plan that's before you but they have prepared a plan and analyzed that it could be done without the waiver and with the parking structure. They have read through the Planning Department's Report and their comments and recommendations, and they have no objections to any of those. Traffic was brought up last week at the Parks, Recreation & Community Enhancement Committee as being somewhat of a concern on this particular site. As they went through the PLUS Process with the State and presented it to the various agencies including DelDOT, the number of trips falls under the threshold of where an Area Wide Study fee would apply. DelDOT has indicated that they would except that in lieu of a TIS (Traffic Impact Study) for this project.

Mr. Hartman asked what the 26% allowable density is based on. Responding to Mr. Hartman, Mr. Rishel stated that the gross site area of 30.5 acres.

Mr. Hartman asked if that is based on unusable acreage as well. Responding to Mr. Hartman, Mr. Rishel stated that it was based on the total. Maximum density per Dover Code is 900 SF per dwelling unit. So, if you take the gross site area and break it down, the site maximum density could be allowed to be as high as 1,400 dwelling units. It is actually a little over 1,400 dwelling units but obviously a majority of the site is in the floodplain and wetlands, so it gets a little difficult to physically achieve that especially with parking. That is why the Plan before you is only 385 units with the parking that they have.

Mr. Hartman asked if he could have Planning Staff address the density. Is it correct that the site could accept 1,400 units? Responding to Mr. Hartman, Mrs. Melson-Williams stated that the RG-5 (General Residence Zone for Mid-Rise Apartments) has a minimum requirement for lot area of 900 SF per dwelling unit. So yes, if you took the total area of the site and did that math problem they could be eligible for over 1,400 dwelling units on the site. That could be further limited by the number of stories and the ability to fit those units and the required parking associated elements and other elements with that. With the simple math is yes, it could be as high as that density. That is the density controller other than the fact that the RG-5 (General Residence Zone for Mid-Rise Apartments) requires that 25% of the property remain as open space not encumbered by building or parking.

Mr. Hartman stated that there was a comment by one of the neighbors about the access. The danger in a 24-foot road with parking on the side that would present a safety hazard to responders and a hazard to people in the area. How do you answer that? Responding to Mr. Hartman, Mr. Rishel stated that the City's minimum width for a two-way street is 24-feet wide. That is also the same width that is required by the City's Fire Marshal for fire lane emergency access. If parking is to be proposed on either side, you have to increase the width of the cartway. Mrs. Melson-Williams can keep him straight here, but any street that would be 24-foot wide would not have parking allowed on either side. On this particular plan that you have in front of you, Raymond Street which is being extended would be extended as 24-feet wide which would not allow it and would be signed as such to not permit parking on either side. Railroad Avenue is

showing parking on one side of the street as sixteen spaces of parallel parking. They are not included in their requirements for the parking onsite. That cartway is wider. It is 24-foot plus the additional width for the parking space itself and that's in line with the City's subdivision development requirements. If you have parking on one side, he believes that it is to be increased by a width of four feet so that would be a 28-foot wide cartway and if you have parking on both sides, it's to be ten feet wider or 34-foot wide. They are actually proposing wider than 28-feet; they are proposing a 32-foot wide cartway on Railroad Avenue. You would still have an unimpeded full 24-foot wide access for emergency vehicles with parking only allowed on one side and the other side would be signed not to be parked upon.

Mr. Hartman asked if we have an area with 24-foot-wide access that contains 1,400 units. Responding to Mr. Hartman, Mrs. Melson-Williams stated that there are a number of streets in the City of Dover that may only be 24-feet wide. In looking for an example with that kind of unit count it is not likely found here in Dover. Most of our apartment complexes do not have that number of units within them but their access drives are typically 24-feet wide because of the fire lane coverage. She is not sure if Mrs. Gray, the Planning Director has any other thoughts on that response.

Mrs. Gray stated that she would defer to Mr. Lyon to see if he had any thoughts as she does not.

Mr. Hartman stated that it just seems to him that that's a fairly restricted area to have a maximum of 1,400 units. He understands that it's not what they are proposing, but if our Ordinance allows for 1,400 units in an area like this, that should be a concern for the City of Dover. Responding to Mr. Hartman, Mr. Lyon stated that he is not aware of anywhere in the City that has that sort of density; however, there is an apartment complex behind Blue Hen Corporate Center with a 24-foot wide road throughout the apartment complex. He will also mention that Garrison Oak Technical Park is a 24-foot wide with no parking allowed on it. There are roads in the city that have this kind of dimensions.

Mr. Hartman stated that he couldn't understand anything that was said but he will ask a follow-up question for Planning Staff. Is this apartment a first of its kind here in Dover? Responding to Mr. Hartman, Mrs. Melson-Williams stated that we have very few properties that are zoned RG-5 (General Residence Zone for Mid-Rise Apartments) in the City. This is the first new development of an RG-5 (General Residence Zone for Mid-Rise Apartments) property that she can think of. There are certainly other apartment complexes that are out there existing that have well over 300 units in total. She believes that Mr. Lyon was referencing the Blue Hen Apartments project which is behind the Blue Hen Corporate Center between there and Schoolview. She believes that unit count is as high as that but the sheer number of units is somewhat unusual for the City of Dover. But it is also what is contemplated in an RG-5 (General Residence Zone for Mid-Rise Apartments) zoning.

Mr. Rishel stated that DSU has student housing. He knows that it is not similar. Student housing is a little different from apartments but they have a similar density on campus and they have 24-foot wide drive aisles and access cartways. Forgive him for not remembering the name of the development but it is a 55 and older age restricted community with 5-story buildings and it looks fairly recently constructed. He believes that it's called The Grande. They are a similar

development and also have 24-foot wide access ways. Just to reiterate, there were Waivers that were previously requested for streets Raymond and Railroad with regards to design. They are not seeking those any longer. The design fully complies for the City street and design requirements with regards to cul-de-sac length, right-of-way width, and sidewalk on both sides.

Dr. Jones stated that her question concerns the Active Recreation Area Plan. Do you anticipate that your residents will be all adults or a large percentage of adults and if so, why? Responding to Dr. Jones, Mr. Rishel stated that he may ask the applicant to step in to answer this because he knows that they did a market study. It is going to be not restricted. The target is going to be probably younger adults considering the proximity to DSU and there may be some students that may want to live off campus. Almost 90% are single bedroom or studio apartments. They are thinking that they will be younger adults in their 20s or 30s and potentially older.

Dr. Jones stated that she looked at the Active Recreation Plan and she didn't really see anything that would speak to perhaps having family gatherings. Responding to Dr. Jones, Mr. Rishel stated that they do have a pavilion.

Dr. Jones stated that she means activity wise. Responding to Dr. Jones, Mr. Rishel stated like play equipment?

Dr. Jones stated yes, play equipment. Responding to Dr. Jones, Mr. Rishel stated that again, the target audience is a little older.

Mrs. Welsh stated that she is having a hard time hearing everything, but she had a question on the issue of a dorm situation. She just heard the discussion about mostly adult residents. Is it going to be mostly adults or is it anticipated that it will be more of a dormitory situation for the apartments? Responding to Mrs. Welsh, Mr. Rishel stated that it's definitely not going to be dorms. It is not intended to be used that way at all. There is just an understanding given the proximity of DSU and the need for off-campus housing, that there might be a higher population than another apartment complex in another area that wasn't close to a university. That there would be some market there for those types of residents.

Mr. Balascio stated that the units have been purposely designed so that they cannot result in dorm-like style living. They are simply not setup for that. They don't have the shared bedroom, the shared common space within the unit or anything of that sort. They purposely did that. They looked at what dorm apartments look like and purposely made sure that they were not designed in that manner so that it could not result in that. It is something that they do not want because their market study tells them that they are going to get a lot of first responders, military and police, and even some nurses. A smaller percentage would be older adults going back to college. These people could be in their 30s that have decided to go back to college. The architect is present tonight in case you have any questions for her. She is very familiar with the floor plans and anything else about the architectural components of the site.

Mrs. Welsh and Mrs. Malone stated that they could not hear what was just said. Responding to them, Mr. Balascio stated that the units have been purposely designed so that they will not be dorm style living. They have no shared bedroom space and they have no shared common space

within the units themselves. They are simply not big enough and they are targeted for a single occupant in the one bedroom and studio units. The market study has said that they would get first responders, military, police, and college students that would be looking at the units. Again, they do not want dorms and they purposely did not take the approach to having dorms for this site.

Mrs. Welsh stated that she heard the intention was “no dorms” and that was her concern.

Mrs. Maucher opened a public hearing.

Mr. Andre Boggerty – 229 Pebble Valley Drive Dover, DE 19904 (City Council Member At Large)

Mr. Boggerty stated that he wasn’t going to speak but he is a little bothered by what he just heard. He gave the engineer and proposed developer audience, and went to the site to look at it himself with another Council member who he won’t name because they are not here to confirm or deny what they heard. What frustrates him is what he just heard. At the last Council meeting, they granted a Waiver for parking but that was based on what we were told. He just heard, unless he overlooked it, that you can meet the standard with a parking garage. That frustrates him that you would want to take a shortcut to jeopardize the safety of our city and the safety of potential students or targeted individuals who are there. Our mission in part is that they are to ensure the safety of our city. He doesn’t want any developer or anyone coming in who will come to our city and build something and not meet the standard when it’s possible. You just told him that you are not willing to meet the standard by building a parking garage. If you didn’t tell him that, the other question then is he is left to his own thought. He just heard that there is potential for growth. So, who is to say that now that you have potential for growth, sometime later after you build it and it’s going to be filled? We have a shortage of housing. So, we need housing, but we need safe housing. So, what are you going to do now that you are not already planning your phase 2 and occupying more area because you’re not telling us everything? He is concerned that you are not being forthright and had he known that the parking issue could have been resolved he would have voted for that. He wouldn’t have moved forward with allowing some waiver for that. So for that, he is going to ask the Planning Commission to really look at the heart of the issue. Have we been told the truth, is this safe and can we trust the developers that are before us? We need housing. Delaware State Housing (University) is growing and it’s part of our hub, but he wants people who are really going to be honest and partner with the City and not just build something really fast to fleece our City and our community.

Mr. Travis Sudler – State College Road Dover, DE 19904

Mr. Sudler stated that his question and concern is how are we talking about this building when we have no access to it. We are talking about building on property that you can’t get to. We are still debating on how we are going to get to this land. You are up here listening to the actual construction of the property and that’s telling him, like what he heard tonight, that this street has been approved to run through his community. By holding this tonight, you are telling me already that you are going to go ahead and approve the street through his community without fighting for other alternative ways when he made the request to City Council and to people personally. You know my family and he doesn’t know why we are playing this game.

Mr. Sean Lynn – State Representative

Mr. Lynn stated that he was here tonight in opposition to the project. As he communicated to the attorney for the developer, Mr. Dominic Balascio months ago, he has received an outpouring of opposition to this project from the entirety of the community in and around College Road. A community in which with many of you, he serves. The reality is this, that while he thinks Mr. Travis Sudler made an excellent point earlier that while this community does need affordable housing, we need affordable housing in areas in which it's safe and prudent to develop that housing. There simply is no project like this within the city limits of the City of Dover. The closely similar project would be the Blue Hen Mall Apartments; however, he thinks that the major distinction between that project and this is that that project is serviced by Bay Road; a multi-lane highway. The only other projects that he can think of is Leander Lakes out by Dover High School, which again as the Planning Office will tell you, we have done significant work over the years to make Route 8 and flowing into North Street, the main new thoroughfare into Downtown Dover. That is where development should be because Route 8 can handle the capacity. He has been blessed over the years to represent in his other hat, a variety of apartment owners and probably the largest apartment owner in the City of Dover. The only project that we have even remotely like this in our inventory would be Silver Mill Apartments. The road Hiawatha Lane which is the road that services Silver Mill Apartments is not the same size as the roadway projected by this unit and certainly doesn't have the amount or capacity that this unit would suggest. The reality of it is that this is not an appropriate location for a project of this size. College Road and Saulsbury Road can't handle the capacity. If anyone in this room has been on Saulsbury Road trying to get home during rush hour or trying to get to work in the morning, you know that it is next to impossible to go anywhere quickly on Saulsbury Road. We are talking about adding 600-800 more vehicles onto the already congested arterial roads in and around this area which would include College Road and Saulsbury Road. We already have major safety issues along College Road. The City, the members of City Council, and the Mayor, we worked together to install a pedestrian crosswalk unit on College Road to allow Delaware State University students to cross the road safely. They installed that unit because there were issues with traffic and traffic flow in and around College Road. It presented a legitimate safety concern with students from Delaware State attempting to cross College Road to get to their residence. Now we are talking about adding 600-800 more vehicles to an area that is already unsafe and is already being serviced by a H.A.W.K. unit. For all of these reasons, he would ask that the Commission deny this application. It is simply the wrong place at the wrong time and again; it is not as if they have not communicated this to the developer. Dozens and dozens of constituents have called his office opposing this project. When he first got word of it, he is lucky that he and Mr. Balascio have worked together at Hudson, Jones and Jaywork probably 20 years ago where he was an attorney representing some developers in and around the State of Delaware. He communicated to him that he oppose this and this isn't good for his community and please place it elsewhere. Regrettably they haven't listened and they are trying to force through with this. It is not wanted; it is unsafe and he would ask this Commission to deny the application.

Mr. Bill Hare – 965 Westview Terrace Dover, DE 19904 (City Council Member – Second District)

Mr. Hare stated that he heard some things tonight that made him wonder but first he will address the parking issue. He guesses when the firefighters, the police and the nurses come to rent one of these places, they are going to have to be an abstinence person. They don't have a partner that can sleep in a bed with them that has two cars. He doesn't know how that means that we don't

need the parking that we have required. Most firefighters, police and nurses that he knows have a significant other that lives with them. He can't see waiving the parking at all especially when they said that they could meet the requirements. Following up on what Mr. Sudler said, he was out there looking at this property. He doesn't know that there has been a confirmation on how they are going to get back there. He looked at the red things that they stick in the ground and someone was going to live in the mobile home there. If this project gets approved, then this main road is going to be ten feet outside of his front door. He doesn't see how that is considered right-of-way. They are going to take down 15-20 trees in front of this mobile home and then put a road right through there so when somebody comes out their front door, they are going to have to make sure they are looking for cars so that they don't get hit. When he first heard of this project, it was like 200 units and then he read that it was around 300 units and now it's 385. He was told that project change so does that mean that if it does get approved that maybe they can just do 600 or 700 units because "projects change". He just doesn't see how they can waive the parking and proceed ahead to approve this when he doesn't even know if access is approved yet.

Mr. James Paige – 355 Rita-Wilma Road Dover, DE 19904

Mr. Paige stated that his questions go to the Committee. Why would you even take the time to do what you are doing now when they don't even meet the requirements by the City of Dover? They want all these waivers. They would do this and that and shorten their parking. If you know you're not straight when you come, don't come. Don't be asking for favors. The prime example in the City of Dover right now is that you can't even park your own car on the grass. If you know that, why are you going to try to bring a car in to park on the grass? You can't be excused for it so why stoop or change your policies just to please someone else or for the revenues. They are asking for too much and he doesn't trust them. Is the main entrance College Road and Mishoe Street? Picture this, you put a stop light right there with the traffic that we have on that road, no one on College Road would get through and no one on the other side on Mishoe Street would be able to get out. Have you ever been in the traffic when the train stops with traffic backed up both ways? You would be there all day. The next thing is college students. This thing is being built for basically 30 year old first alert people. What will someone with a child that wants to continue their education over 30 do? If they do have a child, what is the child supposed to do when there is no school? He saw no facilities for the kids to play on. So there are a lot of things that we need to think about. Not we, because we already know that we don't want it. You all need to think about it before accepting it. He thinks that he is a pretty intelligent guy but for his own sake, there was a question asked earlier on the voting. He has never heard someone answer yes or no by saying "present". What does that mean? Responding to Mr. Paige, Mrs. Melson-Williams stated that in Mr. Hartman's earlier vote, he was choosing not to vote "yes" and not to vote "no". He basically voted that "yes he was present" but he was really abstaining from voting on that application.

Reverend Raymond Fisher – 315 Raymond Street Dover, DE 19904

Rev. Fisher stated that his concern is that you get a toe and you want a foot. When he says that he means that they will say anything right now to get what they want. Once they get that, they will want something else. For we who have been there for so long, he has been there for 60 years, it is not fair for somebody to come in and get what they want and forget about the people who have spent so many years in a particular area. Secondly, he is concerned about children. He loves children and it would bring so much traffic back there that it would not be safe for not only

children but for adults. Right now there are some handicapped people living back there. Even now during DSU Homecoming, people park on Raymond Street and Mishoe Street; and they are mostly young people. He doesn't drink but they say when you get that fire water in you, you are not fully conscious of what you are doing. He would give his life for saving a little child who happened to be playing or crossing the street and someone drives through there intoxicated and kills the child. He is strictly against that. There are other properties around so, why there? Is it because it's a black community? He is going to say it like he feels it. They can't help that they are black. They can't help that they own the property that back then was very cheap. His grandfather worked for DSU washing dishes for 35 years. When he bought that land, it was dirt cheap because no white person wanted to live back there. So, why now that somebody wants to make a fortune? He gets letters all of the time to sell his property. No, he isn't selling unless you are going to give him what he wants and he doesn't think you can afford that. He is concerned about safety and senior people who some live in Mishoe Towers. Those people have lives and they may not mean much to the developer but they mean a whole lot to him. He is a preacher and he is concerned about people's lives. He asks the Commission to reconsider. You can say that it is a racial problem all that you want to. He doesn't care what you say. Why go into a community that has been there for years? On the other end of College Road, there is a lot of ground there and they have for sale signs there. He disagrees with the whole thing. It's just like cancer; if you lose a toe you might lose another one next to it. If we give into this and they get what they want, who says they are not going to take everything?

Dr. Wilma Mishoe – 353 Rita-Wilma Road Dover, DE 19904

Dr. Mishoe stated that she has been in front of City Council a couple of times and she has talked to others a couple of times. She is not going to take the time to go through all of the history and her opposition before. She agrees with everything that has been said thus far and she is absolutely against the project. Her reason for it, and it has nothing to do with them developing their land and building their beautiful apartments and housing. She is strictly concerned about safety and security and the access that they chose to use to get to their property. Access meaning coming down Mishoe Street which is a very short and then turning onto Raymond Street, which you have already heard is not really that wide and accommodative of what they want to do. But even more so, she has an issue with ownership because she has in her hands her survey property maps and she has her deeds and tax bills that she has been paying. Part of what they are calling Raymond Street is owned by her and is located in the County. She understands that some things have taken place recently that she is contesting in terms of annexing land that she owns into the City and she didn't request that that land be annexed into the City. It was deemed by someone as abandoned land when she can prove otherwise. The land was never abandoned. They have for over 50 years now, maintained that land and she has expenditures to prove that is the case. A part of Raymond Street that they are asking to consolidate or make improvements on is what she is saying that she owns and she is against it. She does not want them to do anything with her land. As it has been said, they really so far have not proposed a way to access their land other than coming through land that she owns. She is asking and requesting that they find another way to access their property and build the housing that they choose to build. Standing with her are her two sons who are to inherit that land as she has inherited from her father. Travis Sudler who has already spoken and Roy Sudler who is her older son who will speak at this time.

Mr. Roy Sudler Jr. – 5 Mishoe Street Dover, DE 19904 (City Council Member – Fourth

District)

Mr. Sudler stated that as someone who has served this community for over 18 years in different capacities on different Commissions, he thinks that we need to continue to put the safety of our constituents first. Although we do need to grow and have development, we need to make sure that our traffic and roadway network system infrastructure can handle the capacity and density in which we are seeking to occupy. He just asks that we continue to do a great job keeping our constituents first and putting safety first before the mighty dollar.

Dr. Mishoe stated that there are other property owners who are here tonight as well as residents of the apartments that are on that property as well. Senior citizens, those who have physical and even mental disabilities live in that area. This is truly a safety issue in addition to the dispute of property ownership.

Ms. Sandra Ryder – 291 College Road Dover, DE 19904

Ms. Ryder stated that she owns property that runs along Conwell Street and empties into Raymond Street. Her concern is that she has children and grandchildren, one of which is disabled. Some are coming in by van and some coming in by bus. This is horrible because everybody is going to come along that road. They already have problems out on State College Road with a kid getting off of the bus because she can't get off quickly. This is horrible when it comes to her. Drivers harass you and we are already harassed and nothing is really going on. Please somebody consider what they are going through.

Reverend Rita Mishoe-Paige – 355 Rita-Wilma Road Dover, DE 19904

Rev. Mishoe-Paige agrees with everything that has been said. Councilman Boggerty and I are on the same page here. She had just written it down. Her training says that when you have a vision, write it down and make it plain. She too believes that the developers have not been honest and straight forward with us. Tonight is the first time that she is hearing that this is going to be for college students, first responders and nurses. She thinks that they are really making up stuff. She is completely in opposition to this project. The overflow of parking needs are probably going to flow right over onto Mishoe Street which would be their street which is going to have some traffic congestion there. When you are coming through Raymond Street, she walked the area today and saw the property stakes that are where they want to come through. It has already been said that that would be taking away part of the property that people already own. It is a straight street and it looks like you are going to make a straight street crooked which is not good at all. They heard about the Fire Marshal saying that he will review; so, we don't know yet if there is enough room for your fire trucks to come through. He is going to review so that has not been approved. We don't know about the EMS. We don't know about the police. So, it is definitely a safety issue. All of this, Rev. Fisher brought up the racial piece of it and she said that every single property owner in that area is African American. So it did nothing but take her back to when white Caucasian Americans took away land from the Native Americans. It seems as though that's what the developers are trying to do here in her opinion. They have already been told more than once that Dr. Mishoe, her sister, owns quite a bit of that land that they want to make improvements to and they are not for that. She is asking the Commission to vote against this entire project and that they are trying to come through land that is not theirs. She really doesn't know how you can sleep well at night knowing that you have helped give somebody's land away.

Mr. Sammy Barrineau – 320 Raymond Street Apt 200 Dover, DE 19901

Mr. Barrineau stated that he loves the community. It is quiet and peaceful and he gets the exercise there. He is handicapped as he had a stroke in 2016. Since he has moved there, he does a lot of exercise since there is not a lot of traffic in the area. He is definitely against a lot of traffic being over there now because he doesn't want to get hit by a car. He is learning how to walk again and use his arms and stuff by exercising in this area. He feels safe here and there is not a bunch of crime. It feels great staying in this area and he wants to stay safe and not have a bunch of stuff going on to bring more traffic there. He wants it to stay like it is because he feels more peaceful and a lot safer there without having a bunch of traffic. He has his kids with him and he wouldn't want a car to hit him while he is walking with his kids. Bringing more traffic to the area will cause a big problem for him and his kids. He really appreciates if the Commission does not bring more traffic in there.

Ms. Michelle Hughes – 320 Raymond Street Dover, DE 19904

Ms. Hughes stated that she also agrees with everything going on. She is totally against the road going through there because it's dangerous. They live in a good community and she likes it the way it is.

Mr. Lewis Jackson – 320 Raymond Street Apt 306 Dover, DE 19904

Mr. Jackson stated that for the last ten years this has been his home and just the thought of them bringing another road through there is heartbreaking. They have kids that are handicapped that live there. What are they going to do? He hears about firemen and nurse's aides but what about the elderly? He is 70 years old and if they bring a road through there, what is he going to do? He hopes that the Commission doesn't approve it because it going to do a lot of people harm than good.

Ms. Pilar Sudler – 17 Tallowick Lane Dover, DE 19904

Ms. Sudler stated that she is a very great advocator about economic development and growth. She moved here from Seattle, Washington 17 years ago and she knows what a big city looks like and she misses that a lot. It cannot be done when you are approving multi-family developments that she has seen from 17 years of living in the city with no roads. The commuters that come from Route 8, they only have Loockerman Street which is a two-lane street, Forrest Avenue which is also a two-lane street and College Road which is a two-lane street. If we continue approving developments of this size, they have to be done with transparency and with great planning. You have to take into consideration the residents who already live in Dover that have to use those very congested streets. Right now, from what she hears here tonight, this project is lacking all three components. There is no transparency, it's very poor planning, and we are taking into consideration the already stakeholders that already live in the City of Dover.

Mr. David Anderson – 217 Cecil Street Dover, DE 19904 (City Council Member – Fourth District)

Mr. Anderson stated that he wanted to thank the Commissioners for their service and he has the utmost respect for their expertise. He knows that they will come to the right decision on those issues and he is not going to in any way second guess that. You already have his written comments about the parking waivers so he is not going to rehash that. The one concern that he

has, has nothing to do with zoning but he wanted to ask the Commission to consider tabling this issue for legal review because there is a dispute in some areas of ownership of the property which is currently working its way through the legal system. He just thinks that it would be very wise to have our Solicitor review to see if he believes that it may have merit if it goes to court or not. If it does have merit, then it should wait for that process to continue. If he doesn't believe that it does, then that opinion will allow the Commission to make their decision either way. He just thinks that until the ownership of certain parcels and the right of ways that would be taken to build the roads, until that it taken care of, he doesn't believe that it is a prudent idea of one who deals with the City's finances. Us okaying that wouldn't be prudent at this time.

Mr. Robin Christiansen – 714 Carol Street Dover, DE 19901 (Mayor of City of Dover)

Mr. Christiansen stated that he still has great concerns about the traffic and safety of the development being put behind Raymond Street, but he has a bigger issue concerning this project. One of the major reasons that back in colonial times that we fought the British was for property rights. He agrees with Councilman Anderson. He thinks that this should be put up for review to ascertain who owns the property before we map out streets and other amenities. Because all that you have in this lifetime is your God, your family, your good name and if you are fortune enough to have any property, that property. He is not here to try to influence in any way whatsoever. He still has the safety concerns which now are exacerbated by who owns the property and until that is settled, he would ask the Planning Commission to table any further movements on this property.

Ms. Lisa Dawn Bentley – Loockerman Street Dover, DE 19901

Ms. Bentley stated that she lived on her own for 3 years. People kept bringing in trash. She would take the trash out and they would bring it in. There is a garage nearby and a little light would come on when she walks near it. People brought her trash back in while she was asleep. She doesn't know who. *(Couldn't hear the rest of her statements)*

Mr. Roy Sudler Jr.– 5 Mishoe Street Dover, DE 19904 (City Council Member – Fourth District)

Mr. Sudler stated that he also wanted to point out that they have a petition from their community with 46 signatures. He didn't hear anything about a petition of opposition. We also have individuals for the public hearing that are online that we need to hear from. He would like to ask that during this time of the public hearing, is it for the public or is it also for the applicant to come back and speak? Responding to Mr. Sudler, Mrs. Maucher stated that after public comment they will go back to the applicant.

Mr. Sudler asked if the public could come back to speak after the applicant? Responding to Mr. Sudler, Mrs. Melson-Williams stated that typically they do allow the applicant to return to the podium in order to address any questions that were raised during public testimony or for additional questions that the Planning Commission may have a result of what they heard during public testimony.

Mrs. Melson-Williams stated that she wanted to enter into the record the written comments that they received. These were received today and they were distributed by email and also a hard copy to the Planning Commission members. This is the public comment for S-23-06 College

Road Apartments at Railroad Avenue/Grove Street. These comments were received as of 2PM this afternoon. Item #1 is an email of March 20, 2023, forwarded by Mrs. Andria Bennett, the City Clerk, on behalf of Dr. Wilma Mishoe and it had several attachments. By reference she is going to read the name title wise. Item #1A was a petition against S-23-06 and it outlined three items in particular: the waiver request for the reduction of parking requirements, the traffic safety problem with a 24-foot-wide pavement, and a safety analysis or a traffic impact study. That petition, after outlining some statements, does include a series of signatures. The list consists of 46 individuals, some of which have spoken this evening. Just for reference purposes there are a variety of addresses on Rita-Wilma Road, College Road, a number of residents from the Mishoe Cove Apartments that outlined their unit number and other addresses on Raymond Street and some other locations like the Whatcoat Shelter and addresses on College Road. Item Attachment #1B to that submission is a letter of November 4, 2022 from Ms. Shannon Owens Esquire on behalf of her client Wilma Mishoe regarding Raymond Street also known as Jason Street. That references the question of ownership. Item #1C is a letter of November 29, 2022 from Mayor Robin R. Christiansen which outlines his veto of the City Council actions regarding the Subdivision Waiver and as reported previously, that veto was not overridden. The second item in this set is Item 2, an email of March 20, 2023 from Councilman David Anderson on the parking waiver noting constituent concerns on traffic and parking that had reached out to him. That set of public comments is entered into the record and at this point we will go to participants that have joined online.

Ms. Kaylynn Daniels – Resident Advisor at Mishoe Towers – 320 Raymond Street Dover, DE 19904

Ms. Daniels stated that she has 17 residents who would like to speak but she believes that she is the consensus and would like to do so. They are against the plan in looking at the traffic proposals to extend our cul-de-sac for access to the back 30 acres for development. College Road at this time, is already overrun with traffic. They have traffic from DSU students, both car and foot traffic. There is a big concern with the Door Dashers blocking the western gate. There is a bottleneck already where the student crossing is. We have an overflow of traffic from Whatcoat Shelter and Social Services and not to mention all of the traffic that comes into the College Business Park. A big concern is also North Dover Elementary School with drop-off and pick-up that is actually on College Road. The buses are on College Road and the parents are on College Road twice a day. They also have an overflow of traffic from Presbyterian Senior Living, which locals refer to it as Westminster Living. The expansion of this road will just simply be an added over flux of traffic. She doesn't think that they are taking into consideration the foot traffic of the students trying to get to campus. It will just be a total disruption to our tranquil neighborhood back here. They have to take into consideration the construction vehicles. The street will be widened so that emergency vehicles can go through and there will be much more personal traffic. We are talking about 385 units with an access of over 680 parking spaces. They are just a small community comprised mostly of elderly and disabled people. This will totally change and disrupt our life. They are all for housing. They are against this expansion of our cul-de-sac. They vote no. She is the residential advisor for Mishoe Cove and she is also an outreach worker for Brandywine Counseling. So, she kind of always has her ear to the street as to what they need and what they would like. Again, she has fifteen residents and a few students from the Courtyard Apartments who are also concerned about the expansion here. Many developments are practically located directly across from Mishoe Street so that would be a big concern for them.

She actually has three representatives from some of the three apartment buildings over there who are quite concerned about this proposed expansion, and they also vote no. They are against this associated plan.

Mrs. Maucher closed the public hearing.

Mr. Hartman stated that after reviewing this without the benefit of the public comments, his main concern was property rights. He believes that it would be enough to hold up this application by tabling it or delaying it. Looking further about the concerns with safety, especially with all of the neighbors, he doesn't believe that we should take an opinion from DelDOT that a study is not necessary. He doesn't believe that we should reduce the parking. Everybody has that valid opinion that it is going to create a problem. To quote one of the speakers, "they chose the shortcut". Also, people were concerned about it not being a safe location for this. Every member here wants good and safe housing. The main concern is safety and everybody that has spoken doesn't believe that it is going to be a safe place because of the traffic and the access. Unless he has some argument from his fellow Commissioners, he intends to propose that they deny this application outright rather than table it.

Mr. Balsacio stated that there are a few comments that were made that he would like to politely comment on. Especially what Mr. Hartman just said because there is a little bit of confusion going on. The Planning Commission is in a tough spot tonight and he realizes that. With the comments that he is about to make, he politely says and also Mrs. Gray and Mrs. Melson-Williams can confirm what he is saying. As he goes through each point, they can be confirmed. First, their use that they are applying for is a use by-right under the Code. This is not a Conditional Use. This provided for in your *Comprehensive Plan*, it's provided for in the Zoning Code, and it's provided for in the Subdivision Code. They meet all of the requirements except for one requirement which is the Parking Waiver. They did not take a short cut on this. It came back to them with comments that they received from the Planning Department that they were going to result with way too much parking. They said okay no problem, we will decrease our density and not do as much and seek the Parking Waiver. With that being said, they can provide the additional parking and they can remove the Waiver which means that they have a plan that meets all of your code requirements. This is not a plan that can be denied. You guys have already said by adopting your *Comprehensive Plan* and your Zoning Code that they can do this. They are rightfully coming in saying that they comply with all of your requirements and they are seeking approval for that. The next point, which can also be confirmed by Mrs. Gray and Mrs. Melson-Williams, is that the Parking Waiver has not been in front of any other body. This first came up when they did the application. He thinks that Councilman Boggerty who commented on that was confused because it was not previously in front of any other body. This was brought up as part of our submission to the Planning Commission and the engineer with him tonight can also confirm that. The third point, he hears repeatedly about their density increasing. They can't increase our density unless they come back to you. Once this plan is approved, it is approved for what's on that plan. So if they came back down the road, they would have to come back before the Commission and show that they meet all of the requirements for whatever increased density that they are going to be putting in. They have no intentions at this point in time in doing that. Again, to do so they would have to come back before the Commission and all of the Committees that they have already appeared to in order to get that approval. They could not just put an additional

Building Permit in for additional units. They would have to come back and have the additional approval. Next, the access to the property has been brought up and Mrs. Melson-Williams and Mrs. Gray are very familiar with this. They were asked to go in front of Mayor and City Council and Mr. Rodriguez to have all of the right of way identified and re-annexed into the City which was approved by Mayor and Council which Mr. Rodriguez looked at. They provided all of the documentation for it and it was approved. Those roads go back to a Subdivision Plan which goes back to an 1890's Plan. Those roads have always been there. They went through and worked very closely with Mrs. Gray, Mrs. Melson-Williams, and Mr. Rodriguez. They even met onsite with people and met with Dr. Mishoe and one of her sons with Mr. Rodriguez where they went over all of this. The documentation that she provided says that she is adjacent to a street. Mr. Rodriguez looked at this because it was forwarded to him. Again, Mrs. Melson-Williams and Mrs. Gray were a part of this. They have had since October or November to provide any information. They have reached out to their lawyer and nothing has been heard. Mr. Rodriguez hadn't heard anything. The engineers that he has with him tonight, put out thousands of dollars at the request of the City to show that "your right-of-way" is "your right-of-way. They can't be denied access to the right of way at this point because it is a public right-of-way and it has already been approved by utilization of our land. That is in part why they own it and are developing it pursuant to the Code.

Dr. Jones has brought up the point in regards to playground equipment for the kids. Again, when they went through and worked with the appropriate Committee, the general consensus was to exclude playground equipment. He has no problem putting in a small playground area for kids based upon what they think it will be utilized for. That is something that they can work with the Planning Department to identify the best piece of equipment to put in that area. They have enough room to do it; so, they are fine with that. He thinks that ultimately what is going to happen is that it is just going to sit there and not be utilized. Due to the configuration of the property, they came up with more of the walking paths and put in blacktop that was going to be for the courts and all of that kind of stuff. If that is something that you want, they are more than glad to do it. That is the only thing that he has heard on the Recreation Plan even though it was approved by the Committee.

With regards to the traffic study, they have already gone through this with the Planning Department. They have spoken to DelDOT and gave them all of the calculations. They have met that requirement under the Code. There is nothing in the Code, because they asked, that is independent of that requirement that they have to fill; so, they have fulfilled that. What he is saying respectfully as an applicant is, they have started on this application well over a year ago. They were asked to go through an Annexation process to clear up the right-of-way for the City. They did that at their expense and spent thousands of dollars to do that and they appeared in front of everybody. They even worked with Mr. Rodriguez. Every time they have been asked to do something, Mrs. Gray and Mrs. Melson-Williams can confirm, they have done it. They have augmented it. They have moved the buildings around and they done everything. All of the Planning comments they have looked at, they have said okay to. They have gone through the PLUS procedure. They even backed off because the consensus was not to do the dorm style. They substantially decreased the density from what was permitted under the Code. He would respectfully say to the Commission that he understands the position that you are in. Mr. Rodriguez knew this application was tonight and he has previously heard and has all of the

information on that ownership question. If that wants to be addressed after this hearing tonight, it has nothing to do with their approval. Dr. Mishoe or whoever is allowed to present whatever they want as they go through wrapping up their Site Plan with Mrs. Gray and Mrs. Melson-Williams. They have pulled it all. The engineers have looked at it, their title company has looked at it, and Mr. Rodriguez has looked at it. It unequivocally goes back to the 1890's to a Site Plan and all of the roads are there. They have gone above and beyond to give the Commission a Code compliant Plan that meets everything including all of the Fire Marshal codes and everything before you tonight. What more as applicants can they do? Their property rights are being taken away from them. He respectfully submits to the Commission that they are not permitted to deny their plan because it is a use by-right. He knows that that is hard to hear because you want to take that measure based upon the comments tonight but you have to look at it from their way. They purchased a piece of property knowing that it was a use by-right and all that they had to do was meet the Code requirements. They have gone through that process and have met every requirement that has been asked of them. How at this point can they be denied a legally compliant plan? He has his engineers with him if there are any of the points that the Commissioners are stuck on. He had both of them come tonight because they are both familiar with various parts of the project. He also has the architect here. Please take advantage of that because they have gone above and beyond and have been a good applicant. When someone tonight is questioning their integrity, everything that they have given to the Planning Department and to Mr. Rodriguez has been in writing and it has not changed. He thinks that there is confusion because when we get in front of various committees and bodies, things are said that don't necessarily tie in. Like when they were in front of the Parks, Recreation and Community Enhancement Committee last week, everybody kept on speaking about parking which had nothing to do with that Committee. They were told not to speak to it and to stick to the Parks and Recreation points; and that's what they did. If there are any questions, please ask. They have been very open and honest. Again, Mrs. Melson-Williams and Mrs. Gray know that because they have been copied on numerous emails. Mrs. Gray was also attended the meeting with Dr. Mishoe and Mr. Rodriguez over ownership, and it was absolutely resolved that day.

Mrs. Maucher stated that it is a lawyer's opinion. You can ask five lawyers and get five different opinions so she is not sure that that's significant. Responding to Mrs. Maucher, Mr. Balascio stated that this was definitely decided. Mr. Rodriguez looked at this and all of this documentation was given to him, Mrs. Melson-Williams, and Mrs. Gray. They had both engineers go through with surveyors. They got another third attorney involved who looked at it with Mr. Rodriguez. Mr. Rodriguez asked for some clarifying documents and they got them from the title company and provided them. In Delaware, lawyers take and make all of the decisions on the title. They are what they call the "title agents" in Delaware. They make legal opinions every day. When you purchase your home, it's him as your settlement attorney who does it. When you develop a piece of property, it is him as your settlement attorney who issues titles. In Delaware, the attorneys are the one who decide that. They provided a lot of documentation. They spent a lot of time on that and they traced it back to its original roots. The Planning Department has the plans where they went back to the original plan from the 1890's and traced it all the way forward. It was always shown on your GIS mapping that way. It was shown in the County records and the State records that way. The County and the State both consented to the Annexations and then the City Council with Mr. Rodriguez, approved it and they moved forward. It's really not a step that normally they as an applicant has to do but they did it. They went through that process and got it done.

Again, everybody has had ample time all throughout that process to question the ownership, to appear before Mayor and Council, or to submit something to Mr. Rodriguez. Even after that, they met with people and they still had ample time. No one has provided any documentation. All these documents are recorded and they are public records; anyone can provide them. They have combed through them. The right-of-ways are where the right-of-ways are shown on their plans which are consistent with your Annexations that were approved by Mayor and Council which are consistent with State and County records.

Mrs. Malone stated that she searched some of this property because what really bothered her was the ownership question. What she found was that the property was sold on September 26, 2011 from GEM Investors and then it sold again on November 11, 2011. Then the owner was College Road Management Inc. and then Kent Storage Facilities. Is that affiliated with the Patel College Property? Responding to Mrs. Malone, Mr. Balascio stated that those would be the prior owners in the chain in title. They are not the current owners; they were the prior owners to us.

Mrs. Malone stated that is what she is asking. Did Patel College Property buy it from them? Responding to Mrs. Malone, Mr. Balascio stated yes, they are the prior owners in the chain of title but the chain of title isn't what's being questioned; it's the right-of-ways. No party owns the right-of-ways. The City of Dover holds the public right-of-way for the benefit of the public; so, they are not in anybody's deeds. It's the same thing when you do a Subdivision Plan or any other plan. When you dedicate it to the "public", it's a public roadway. Since the 1890's, those right-of-ways have been dedicated, shown on a Subdivision Plan, and have been part of City records. They have provided all of the documentation to Mr. Rodriguez and he confirmed it.

Mrs. Malone stated that she wasn't talking about the right-of-way. She was talking about property that Dr. Mishoe said she owned. Responding to Mrs. Malone, Mr. Balascio stated that is what they met with Dr. Mishoe, Mr. Rodriguez and Mrs. Gray about. The part that she is claiming ownership to is part of the right-of-way. They also looked at every adjacent property owner along that way and it ends at the roadway. Mr. Rodriguez was provided this information, Mrs. Gray was at the meeting and their title to their property stops at the right-of-way like it does for all owners of properties. It mentions the road because it says "up to" or "across" or "by that road", but it is not the actual road bed at all. Mr. Rodriguez looked at that and there was even a deed that Dr. Mishoe brought up during the meeting. They immediately got that deed, showed it to Mr. Rodriguez, and he agreed that it mentions her property running by the right-of-way but does not cross over or own the right-of-way.

Mrs. Malone stated that you were saying that her property backs up to this property. Responding to Mrs. Malone, Mr. Balascio stated no, her property or any of the adjacent owners is not part of the public right-of-way. The public right-of-way is held by the City of Dover. They went through and looked at this. All parcels are not in question. What they are questioning is if the City owns the public right-of-way which it does. That is why that argument cannot be used to deny our application because nobody has made a challenge that they own their four parcels. He would hope that Mrs. Gray or Mrs. Melson-Williams could speak to this. It was completely vetted and spoke about with Mr. Rodriguez and looked at. They suffered a huge delay and tens of thousands of dollars to address that one issue.

Mr. Hartman stated that if this access is so important, why don't they as the Planning Commission have a letter from Mr. Rodriguez rather than hearing it hearsay from the applicant? Why wasn't that given to the Commission in the packet? Responding to Mr. Hartman, Mrs. Gray stated that the legal issue is not a Planning Commission or a Planning Department issue. When talking with Mr. Rodriguez, the process was followed regarding the Annexation of the roadway delineating the right-of-way in the road. That issue was determined to be a civil issue.

Mr. Hartman stated yet in Article 10, Section 2-22 one of the things that this Commission is supposed to look at is "the provision of adequate access to all proposed structures, equipment, or material on the site for fire, ambulance, police, and other emergency services." This affects access to this property. Why is this not a Planning Commission issue? Responding to Mr. Hartman, Mrs. Gray stated with the issue in her perspective, the question was asked and answered. The road was annexed into the city and the right-of-way was delineated; the right of way was defined.

Mr. Hartman asked if the City is prepared to go to court over that? Responding to Mr. Hartman, Mrs. Gray stated that she is not the City Solicitor; so, she cannot answer that question.

Mr. Hartman asked if it would be too much to ask for an answer from Mr. Rodriguez on this matter? Responding to Mr. Hartman, Mrs. Gray stated that she can't answer for Mr. Rodriguez. She had asked him to be here tonight should any of these issues be brought up, but he was unable to be here tonight. She will certainly be happy to ask that question of him should that be the pleasure of the Planning Commission.

Mr. Hartman stated that that should be at the very least in his opinion, unless there are opposing opinions of Commissioners then that would indicate that they should table this measure until we actually have something to address what they are supposed to do. If it's in opposition to what the City Solicitor says, he would just like to have clarity on that. Responding to Mr. Hartman, Mr. Balascio stated that their Plan is a Code compliant plan. They were told that in order to submit this Plan, and Mrs. Gray can verify this, that they had to go through Mayor and Council to get that right-of-way annexed and approved into the City which the City did that. It is officially recorded and done. You (the City) as taken ownership over that public right-of-way but you have already had it since the 1890's as each property came in. Mrs. Melson-Williams and Mr. Gray helped them go through this. Those were all identified through the State of Delaware, the County, the City of Dover, the Planning Department, and Mr. Rodriguez; and, this was all approved. For them to come here for this step tonight, they were asked to take and clean that up because it was unclear when certain people came in whether when they came in if they also identified the adjacent roadbed to their property which they are supposed to do. It was a house cleaning amendment because the roadway was in part left behind in either the State or County. It was a road regardless; it was whether or not the City has jurisdiction over it. What they did is they went back and worked with those agencies, identified the parts that they believed were not annexed in. Then they did a whole housekeeping one where the whole roadbed was annexed in by the City of Dover. That is what Mrs. Gray can confirm. That's what they did. It was always a road. They didn't take property from any individual homeowner when they went through that. They worked with the City of Dover, the County, and the State to collectively make sure that all of the roadbed was in the City of Dover by the time that they got done. It was always a roadbed

in the 1890's plan that they based it off of. They moved forward with all of the other agencies and related deeds. They pulled every surrounding property on that plan. They pulled their deeds and they matched it to the right-of-way. They went back pretty far in title and traced in back to that 1890 plan which is pretty impressive to do. They have in front of the Commission tonight, a code compliant plan. They have met all of the Codes, all of the regulations of the Codes, and all of the fire codes. They have worked with pleasure with the Planning Department and have had all of their comments and revised things and done what they have asked them to do and have it documented. At this point, what more as an applicant is he supposed to do if he has complied with all of the additional hearings that they have been asked to do. They have complied with all of your rules, regulations and Code requirements. How can he be denied tonight? Responding to Mr. Balascio, Mr. Hartman stated that you haven't complied with all of the Code requirements. You don't have the adequate off-street parking.

Mr. Balascio stated that they were asked by the Planning Department to seek the waiver. They can provide the parking. Their density is going to go up. They said they would take and seek the Parking Waiver and not go up in density, if that is something that the Planning Department wanted to recommend so that the design of the overall site looks better. He is telling you on the record tonight, if you want them to during the process, because there is always amendments that you do to revise the plan between now and getting all of the various agency approvals, they can provide the additional parking. That is not an issue. As he said to Dr. Jones, if she would like to have the children's playground equipment on there, they will do it. Those are the only two things that he has heard tonight and they can fulfill those things easily. The engineers have said that they are well under the density that they could otherwise provide on this site. They can provide that. They were just following a Planning Department recommendation where they were asked to seek the Parking Waiver.

Mr. Hartman asked if the Planning Department asked him to provide examples from New Castle and other areas to support your waiver. Responding to Mr. Hartman, Mr. Balascio stated that he would have to have the engineer come down to answer that but he believes that was indeed the case. That they didn't just willy nilly arrive at a number. They collectively had an ongoing conversation about how to arrive at that number based upon the size of the units and the bed count that was going to be in there.

Mr. Hartman stated that he has a one-bedroom apartment behind his house. It's a very small apartment; but all this weekend, there were four cars parks in the grass from it. Responding to Mr. Hartman, Mr. Balascio stated that if you want them to take and meet the parking requirement even though the Planning Department thought a better design of the project was to reduce it and not have a sea of asphalt sitting there. The issue becomes that when you have this many units and you have the additional parking what is happening is that it's a compounding effect. You keep on ending up with extra and extra and extra units for parking that you don't need because there are so many units going in. What happens is that you end up with a drastic amount of extra units sitting in there. That's when the engineers worked with the Planning Department to say this is the better number. So, they don't end of with a sea of gray out there because this is a beautiful property out there and we are trying to preserve. That is why they didn't touch any of that back part at all.

Mr. Rishel stated that he can offer a whole lot extra. You have in your packets, the justification letter that outlined how there were coming up with their support for their waiver. They did look at other municipalities. They selected in the letter that was provided, four comparative areas using the City of Newark, Kent County, New Castle County and the City of Seaford and how they break down requirements for apartment uses. The City of Newark is 2 per unit. Kent County says 1.5 spaces per efficiency, 1.75 per one-bedroom and 2 spaces per two-bedroom. New Castle is similar with 1.5 spaces per one-bedroom, 2 spaces per two-bedroom, and then they offer an overflow in New Castle County requirement which is kind of like to account for visitors and such where you provide one space per five units on top of the spaces provided per bedroom. Seaford is two per unit. They did an analysis and an average and showed that Dover has a based requirement of 2.25 per unit. It really just comes down to that they feel that that's going to be excessive given the high ratio of one-bedroom and studio apartments that are proposed within these buildings. It's not that they don't want to provide the parking and can't provide the parking. It's really just to reduce what they feel is going to be excess, unused or extra paving. They derived all of this and came up with what's recommended. It is outlined on the second page which the proposed parking rational breaks down this way: 1.5 spaces per studio and one-bedroom apartments and 2 spaces per two-bedroom apartment plus 1 additional space per every five units to account for some overflow. That is how they derived the 683 spaces for 385 units. That breaks down if you run the math backwards to 1.8 spaces per unit average.

Mr. Hartman stated that he understands that; he read the package. You really didn't have to that detail. He is opposing the Planning Office accepting that as justification for a waiver for this especially in light of all of the complaints that they have heard from the community both tonight and in writing prior to this meeting. Middletown has a requirement for 2 spaces. He thinks Bridgeville has a requirement for 3 spaces. Responding to Mr. Hartman, Mr. Balascio stated that has he previously said they are fine with providing the additional parking if that's what you want them to do. Each time that they have worked with the City of Dover, they have always worked with all of the committees and commissions. When they have provided insight of such to do, if it's something that they didn't think of, they take it into consideration and work with them to do it. That is what they did here and they did nothing more than that. They were just working with the Planning Department.

Mr. Hartman stated that you keep saying that and he is going to continue to say that there are things that should have been presented to this Commission tonight. There should have been a traffic study. There should have been adequate parking. There should have been a ruling from the City Solicitor on the property rights issue. You are asking the Commission to make a blind judgement. In accordance with Appendix B, Article 10, the objectives of this Commission is "to assure maximum safety and convenience of vehicular transit, bicycle and pedestrian traffic by ensuring that all proposed and impacted streets, driveways and walkways are adequate but not excessive in number". Responding to Mr. Hartman, Mr. Balascio stated that they meet the requirements as the engineer, Mrs. Gray, and Mrs. Melson-Williams say. In the Plan that they provided to you, all of their sidewalks, streets and everything meets all of the Code requirements including the Fire Marshal comments. They were reviewed as part of all of the agencies and committees that review us before we even get here. They even went to PLUS with this and had them review it. Again, they have offered to remove the Parking Waiver even though it was something that was requested of them. They can work to provide the additional parking. he is

more than glad to work with Dr. Jones on what is an appropriate piece of playground equipment for the children. Other than that, that Code section that you just stated means that the roads right-of-ways and sidewalks that they put in must meet your Code. They meet the Code requirements because there is not any comments from the Planning Department or any of the other agencies that reviewed their packets that says they did not comply. The Fire Marshal is one of those agencies that reviewed it.

Mr. Hartman stated that they are not the Planning Department; they are the Planning Commission and what they are required to do is listed in Article 10, Section 2.2 states “In considering and acting upon site development plans, the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular shall be taken into consideration.” When he tries to take these into consideration, he has no information from the Planning Staff or the applicant.

Mr. Balascio asked Mrs. Gray if part of their packet and all of the other reviews that they had when they submitted this was to review the sidewalks and streets that they are providing to get here tonight. They had them reviewed. During their submission process, what they have submitted to date shows that they are able to meet the Code requirements for the streets, right-of-ways and sidewalks. They have a code compliant plan. There is not any comments that say that they are not meeting the section that Mr. Hartman is talking about. That section turns around and points to the actual Code requirements for the sidewalks, streets, and right-of-way; they will meet those requirements. The Plan that they have right now in front of the Commission shows that they will meet that including all Fire Marshal requirements.

Dr. Jones stated thanked the applicant for mentioning her concern for the playground. She can sense his passion for his work and for the submission of a code compliant plan. But she does think that there are more issues of concern this evening. She is uncomfortable with several things that she has heard. One, they have talked about safety and the traffic patterns and traffic jams. Those of us who live on the west side of Dover experience those things every day. She is concerned about any legal ramifications, but moreover what she would like to say is that regardless of what came out of the Planning Office and regardless to the code compliant plan that does not negate a property owner’s right to contest. That is her concern and from that perspective, she is very uncomfortable with moving forward. She thinks some things have to be straightened out before we can go forward.

Mr. Roach stated that he knows it seems very difficult as far as all of the negative comments. He does want to say thank you for being in compliance with the Planning Commission and working with the consistently. That goes above and beyond so they definitely appreciate that. Seriously, because he is feeling right now like he (Mr. Balascio) is by himself. He does want to say the same thing that Dr. Jones basically said. They know that at times when they are here and in charge of making a decision in regards to any type of application that comes here, they have to do that based on what they have. So it is just like anything, if you imagine yourself being put in that situation and being somebody who is claiming, saying or contesting the fact that they own something, tabling it for a month after you’ve said that you have been working all of this time for them to get more information so therefore she (Dr. Mishoe) has time to work out whatever legalities that she is trying to argue. He feels as though for him, personally and what he thinks

there are all here saying as a Planning Commission, they are not negating his point. You are absolutely right; it is code compliant and it's an acceptable use. He gets all of that because he doesn't want apartments there but you purchased the land and you do what you want to do with it and we go from there. But him being on this Commission knowing that he is just going to say, historically what has been happening forever, Native Americans and African Americans are having land snatched. You are trying to tell him that you have confirmation from someone named Mr. Rodriguez and he doesn't even know who that is. He doesn't have that information so for him, he feels as though for them as a Commission, it would be unfair as much as it is unfair to you. Because you said that you have spent tens and tens of thousands of dollars but that doesn't always negate 50, 60 or 70 years of stuff that has been passed down through people from generation to generation. Responding to Mr. Roach, Mr. Balascio stated that he has no problem if they want to table it for that specific reason. Mr. Rodriguez is the City Solicitor. If it is going to be tabled for that reason, he would ask that they are specifically told what it's tabled on so that they know what they are working on in the interim. What he would like to not have to do is to come back and have to re-go through all of these points. What he heard from Mr. Roach was "the ownership issue" which he is more than fine with working with Mr. Rodriguez on that. They can get it back and compile that data. Number 2 is if there can be a confirmation made in the packet which Mrs. Gray and Mrs. Melson-Williams could tell you that there is no requirement that can be imposed on them to do anything with regards to the traffic impact. They are here tonight and they can confirm that. They already got comments in writing back from DelDOT on this.

Mr. Roach stated that he thinks they are kind of beating a dead horse. He is just letting them know that as far as him personally, for having a person who is sitting here saying that that land has been passed down for generation to generation and for him to hear that is unsettling. Responding to Mr. Roach, Mr. Balascio stated that that is completely fine. If you want to table it for that reason and that reason alone because everything else they are willing to do, that's fine. Because that data has already been compiled and Mr. Rodriguez has it. He believes that Mrs. Gray and Mrs. Melson-Williams were copied on those emails and he can easily tune in and say that because Mayor and Council already annexed that property in.

Mr. Roach stated that again, he is just basically speaking from a standpoint of somebody who thinks this way. How many people have been in jail for 20 years to get released later on because somebody made a mistake? How many times have we had situations where people make a decision and just because that one person made that decision or looked at that map or said this? That does not mean anything to him. He is just letting you know because there is a woman sitting here who is trying to pass her land to her family. So for him, saying that Mr. Rodriguez has some documentation that they can look at, cool. But when he has someone sitting here who says that they own the land and it's been passed down for generation to generation, he feels as though as much as they are going to give him the opportunity to speak here for two hours so that we can talk about it, he feels as though she deserves that time to try to legally fight for what's hers. Responding to Mr. Roach, Mr. Balascio stated that he is very glad if you want to table it for that reason and that reason alone. They can recompile that data and get it to Mr. Rodriguez again so that he can follow up with the Commission in the appropriate manner.

Dr. Jones stated that after all of the discussion this evening, how does the applicant respond to the concerns raised by all of the people how spoke against the project? It doesn't sound as

though there has been communication. One of the things that we do on this Commission, when they have this kind of a disagreement is to usually ask the applicant how they have worked with the residents? Responding to Dr. Jones, Mr. Balascio stated that they made several meetings where they met out onsite; who was invited to those meetings, he doesn't know. Also, this went through the whole Annexation process where all of the notices were given. They have also posted out on the property by putting signs up. He would say that he understands their concerns but also what he would hope is as Mr. Roach just pointed out is that they have appeared before the Commission and followed your rules on a piece of property that allows them to develop it. You guys, over the years, have adopted a *Comprehensive Plan* that repeatedly identified this property being developed in this manner. One of the Councilmen had pointed out to them that there is actually a study on their property. Instead of putting apartments here (and he believes that the City of Dover took part in this study); this property could be developed as a rail access property. They decided not to do that even though they were approached and that's what the prior owners were going to do. That's why the study started because that would have resulted in hundreds of thousands of square feet of warehousing, 24 hour operations, lighting and large trucks coming in and out. That is a permissible code use and they said no they don't want to do that but they want this route of putting something in that they thought was beneficial to the community by keeping it in a residential like setting. They have also reduced the density. He is more than glad to work with the Commission and follow up on any comments that you have. But if it's going to be tabled tonight, they would respectfully request that it be tabled only with regards to that because they have met all of the other Code requirements.

Mr. Cooper stated that that one of the things that Mr. Hartman was getting at was that the Planning Commission looks at not only just the Code requirements, but they look at the human aspect of it as well. He has a great deal of heartburn about the ownership issue which he thinks they are going to squash by next month or however that works out so we are going to set that aside. The parking issue he thinks is completely off the table so he can get rid of that. But what he does struggle with and he is having a very hard time with it, is that he believes very much in your property rights to do with your property in which you want to do and what Code allows you to do. But he also believes very much in their property rights to enjoy their neighborhood and to enjoy their street. They are going to go from having 50 cars a day on a small side street to having several hundred a day. Representative Lynn referenced 600-800 cars which he thinks is a bit of an exaggeration. We are talking about a street that was designed by the City or the County however many decades ago for that amount of traffic. Now we are going to try and use that same street for this significantly larger amount of traffic. He is torn and he is glad that they are going to have a month to think about it and for him to wrestle with it because he has trouble with their property rights versus yours and yours versus theirs. Responding to Mr. Cooper, Mr. Balascio stated that he hears your concern and his answer to that would be that the City protects the residents by the Codes that you have adopted. The Codes that you have adopted in this case, allow them as a use by-right to develop the property in this manner; and, they have met that Code requirement and exceeded it. They went to PLUS and the State of Delaware's DelDOT was a part of that. They followed up with DelDOT afterwards and they spoke about it and this was the decision. Now, for somebody to go back and say after it's been documented that you can use these right of ways and these roads in this way for your plan as by-right and then change it, it wouldn't be fair to them if that's the decision that has already been made. That is why he respectfully submits to you that if you want to table it tonight, he thinks the tabling needs to be

limited to the question of ownership because as the packet before you shows, they have met all other Code requirements and have removed the Parking Waiver to make that clear on the record.

Mr. Cooper stated that that's part of his frustration with the whole situation is the human aspect that Mr. Hartman brought up. He struggles with all that you have invested in this and all that they have invested in their property and the impact that our decision has on both parties involved. In his mind, he is looking at it as one to one. He is not looking at it as 75 residents to your 385 units. It's property rights versus property rights in his mind. And then, it's the human aspect of the Code. It absolutely sucks for a lack of a better way of putting it, for the situation that you are in but it absolutely sucks for the situation that they are in as well because nobody thought in 1890 that this was going to get built up with a 385 unit apartment complex. Responding to Mr. Cooper, Mr. Balascio stated that you just rezoned this property within the last decade for this to go on there. You didn't but the City of Dover rezoned this property meaning they went through a *Comprehensive Plan* amendment. Your *Comprehensive Plan* said that this property should have apartments on it, you approved that *Comprehensive Plan*. Then you updated your Zoning Code and then you made them come and rezone the property. They are code compliant. The prevailing rule under Delaware Law right now (and he hears the public), but the prevailing rule is that if he comes before you, follows all of your rules, and he has a use by-right that you have adopt you can't deny him.

Mr. Cooper stated that he interprets everything that Mr. Hartman read out of that book as the failsafe. They are the human aspect; the failsafe for this Code book. So again, he values your property rights and mine and theirs. That's why he is glad that we are going to table this and we are going to have a solid month to wrestle with that because he guarantees that he is not the only one sitting on this floor that's wrestling with those same property rights issues. He knows that Mr. Roach is and he knows that they are not the only two. He is glad to have this month to wrestle with it and figure it out in their heads because when they come back here, they have to decide that. That's a very tough spot for them to be in. Responding to Mr. Cooper, Mr. Balascio stated that he would ask that when we do come back, they as the applicant are given the opportunity to speak about those points at that time. And in the interim, through Mrs. Gray and Mrs. Melson-Williams if there is stuff that you need, please ask us for it and they will supply it because they haven't hidden anything. Anything that has been asked of us to date, they have provided upon their request.

Mrs. Malone asked for the names of the two people that were speaking. Responding to Mrs. Malone, Mrs. Maucher stated it was Mr. Cooper and the applicant Mr. Balascio.

Mr. Baldwin stated that he realizes that all of his questions that he had written down have been gone over but one thing that he heard it touched on very lightly is that you have people who have owned property for years. No matter what you do or say, this project is going to change their lifestyle and they are going to have to do things differently. He understands that its code compliant but they have to look at the human side of this. How many people are going to have to stop doing some things that they normally do just because of this housing project? He understands that it is your property and you have the right to do it and you are code compliant. But they have to look at the people that have been living there for 15, 20 or 30 years.

Dr. Jones stated that Mr. Rodriguez's name has been mentioned. He is the City Solicitor representing the City. But the family has an attorney so in her mind, it's going to be a meeting of the minds and some kind of reconciliation and some decision made as a result of attorneys representing both parties coming together. So, it will not be a simple matter of what Mr. Rodriguez says. She knows Mr. Rodriguez and respects him but at the same time, they cannot discount their attorney. Responding to Dr. Jones, Mr. Balascio stated that they gave all of the information to that attorney and they have not responded since October or November of last year.

Dr. Jones stated that she understands and she doesn't think that they are fighting with him. They are just simply saying that sometimes one plus one equals two. She shouldn't use analogies because she doesn't do well with analogies. But they just simply cannot negate what is happening on the other side and that is with the Mishoe family and the other owners who live in that area.

Mr. Cooper moved to table S-23-06 College Road Apartments at Railroad Avenue/Grove Street while waiting for the right-of-way outcome, seconded by Dr Jones.

Mrs. Gray asked for the Commissioners to articulate the length of when it's going to be tabled for. Responding to Mrs Gray, Mrs. Maucher stated that they are asking until it's resolved.

Mrs. Gray stated that she is not sure whether that is a proper motion. She believes that it needs to be tabled for a period of time until perhaps the next meeting. Responding to Mrs. Gray, Mrs. Maucher stated that she would say then if they have it come back, if the response is not satisfactory that they continue to table.

Mrs. Gray stated that she would agree with that, and they could have it reviewed at that time.

Mr. Cooper moved to table S-23-06 College Road Apartments at Railroad Avenue/Grove Street while waiting for the right-of-way outcome until next month at which they can assess the property legalities and right-of-ways, seconded by Dr. Jones and the motion was carried 6-2 by roll call vote with Mrs. Denney absent. Mr. Cooper voting yes; for everything stated for earlier. Mr. Roach voting yes. Mr. Hartman voting no; he still has many many concerns about traffic safety, property rights, and parking. Mr. Baldwin voting yes. Dr. Jones voting no; she has the same concerns as Mr. Hartman outlined. Mrs. Welsh voting yes; for all of the reasons stated regarding the concerns that people have over the right-of-way and they need to address those issues. Mrs. Malone voting yes; regarding the right-of-way clarification but she is also concerned that she doesn't want the applicant to be encouraged to continue with this because they have put a lot of time and money into this project for many years and that is not something that she wants the City of Dover to be known for. They are trying to encourage positive development in the city and she is concerned that this would turn other positive development away. Mrs. Maucher voting yes; for the reasons stated.

AX-23-02 Lands of Christina L. Kelleher at 273 Acorn Lane - Public Hearing and Review for Recommendation to City Council of an Annexation Request and Rezoning Request for a parcel of land totaling 0.611 acres+/- located at 273 Acorn Lane. The property is currently zoned RS-1 (Residential Single-Family Zone) in Kent County. The proposed Zoning is R-8 (One Family

Residence Zone). The property is located on the west side of Acorn Lane between Revolutionary Boulevard and South Hancock Avenue. The annexation category according to Dover's 2019 *Comprehensive Plan* is Category 1: High Priority Annexation Areas and the land use designation is Residential Medium Density. The property owner is Christina L. Kelleher. Property Address: 273 Acorn Lane. Tax Parcel: ED-00-068.19-01-13.00-000. Proposed Council District 3. Ordinance #2023-02. *The First Reading of this Annexation Request was held on February 13, 2023. Public Hearing before the Planning Commission is scheduled for March 20, 2023 and City Council on April 10, 2023.*

Representatives: Ms. Christina Kelleher, property owner (attending virtually)

Mrs. Melson-Williams stated that she would refer the Commission to the DAC Report. As noted, this is a property at 273 Acorn Lane. Our *Comprehensive Plan* designates it as a Category 1: High Priority Annexation Area with a land use classification of Residential Medium Density. Currently, there is a single family dwelling on the property zoned RS-1 (Residential Single Family Zone) in Kent County and the proposed use would be to continue that single family dwelling. They would like to take the opportunity to hopefully connect to City water and sewer to resolve some of the issues that they have with the property currently. It is already served by City of Dover Electric and the proposed zoning is R-8 (One Family Residence Zone). In this case of an Annexation, Planning Commission is making a recommendation to City Council regarding the Annexation and the appropriate zoning classification for the property.

Ms. Kelleher stated that she is the owner of 273 Acorn Lane. The property has been in her family for years and she is just looking to be able to connect to City services. She has read all of the information that has been sent to her and at this time, she doesn't have any comments or questions.

Mrs. Maucher asked what the reason was for the zoning change. We do these things and she thinks that they are seeing the effect of sometimes changing and the unintended consequences. There is houses of worship and some of the other things that are allowed in R-8 (One Family Residence Zone) that may not be allowed in RG-1 (General Residence Zone). She is just curious for the reason and if it's just simply to connect to City services. Responding to Mrs. Maucher, Mrs. Melson-Williams stated that the RS-1 (Residential Single Family Zone) that the property is currently is a Kent County zoning classification. Upon Annexation into the City of Dover, a City of Dover zoning classification must be selected. R-8 (One Family Residence Zone) is one of the ones that this property is eligible for and probably the most reasonable of the residential zones that are allowed for this property under our *Comprehensive Plan*.

Mrs. Maucher stated that not knowing the possible uses, are there any that is more strictly just to maintain it as a residential use? Again, she thinks that they have kind of seen what can occur with a Rezoning. Responding to Mrs. Maucher, Mrs. Melson-Williams stated that the other residential districts that are offered are other One Family Residence Zones. It could potentially be R-10 (One-Family Residence Zone) and you would be looking at the same use list. Actually all of the other residential zones that it could become are either more intense in the types of units that would be allowed there and still continue to refer to a number of conditional use opportunities that would require additional review just like if it was R-8 (One Family Residence

Zone).

Mrs. Maucher opened a public hearing and then after seeing no one wishing to speak, closed the public hearing.

Mr. Hartman moved to recommend approval to City Council for AX-23-02 Lands of Christina L. Kelleher at 273 Acorn Lane and the Rezoning request because in the Comprehensive Plan it is a Category 1: High Priority Annexation Area and he also bases it on the testimony of Ms. Kelleher who spoke tonight, seconded by Mr. Cooper and the motion was carried 8-0 by roll call vote with Mrs. Denney absent. Mr. Hartman voting yes; based on what he stated in the motion. Mr. Baldwin voting yes. Dr. Jones voting yes. Mrs. Welsh voting yes; for reasons stated in the motion. Mrs. Malone voting yes; for reasons stated. Mr. Cooper voting yes; for reasons stated in the motion. Mr. Roach voting yes. Mrs. Maucher voting yes; for reasons stated in the motion.

SB-23-01C – Lands of Wyoming, LLC at Jefferson Terrace Extended (Ekaman Subdivision): Conceptual Subdivision Plan - Public Hearing and Review of a Conceptual Subdivision Plan to create six (6) lots from an existing parcel totaling 4.2311 acres to be known as Ekaman Subdivision. The proposed subdivision is to consist of four residential lots, a stormwater management area lot, and a residual lot for residential use. The proposal includes the extension and addition of a cul-de-sac to the existing street right-of-way of Jefferson Terrace. The property is zoned R-10 (One Family Residence Zone) and is located south of but not adjacent to Wyoming Avenue and west of Monroe Terrace. Property Address: unaddressed on Jefferson Terrace extension (also referenced as 3.8904 acres of Wyoming Avenue Rear). Property Owner: Wyoming, LLC. Tax Parcel: ED-05-077-17-06-02.01-000. Council District 2. *Subdivision Waiver Requests: Alternative Lot Configuration and Reduced Frontage on a Public Street (Stormwater Management Area Lot); Increased Percentage of Lots on Cul-de-sac; and Elimination of Sidewalk on Monroe Terrace Frontage of Residual Lot. Note: Any renaming of Jefferson Terrace (to Ekaman Way) is subject to a separate review process.*

Representatives: Mr. Kyle Burchard, Mountain Consulting; Mr. Emmanuel Elize, representative of Wyoming, LLC; Mr. Lacy Holly, attorney representative of Wyoming, LLC.

Mr. Swierczek stated that this is a Major Subdivision Application that is slightly different than the more typical Minor Subdivision Application, primarily because there is not a roadway currently present. Part of the Application is to propose the extension of Jefferson Terrace. What the applicant is proposing that is making this a Major Subdivision Application is that it would extend Jefferson Terrace further to the west. There would be six lots in total that would be proposed with the Subdivision. Lots 1-4 have access currently on what would become a new cul-de-sac known as Jefferson Terrace Extension. The fifth lot would be towards the south of the property and would utilize existing frontage on Monroe Terrace and then a sixth lot which is sort of centrally located to the property would not be for development as that would be for stormwater management. This Application is a Conceptual Plan for a Major Subdivision Review. The first stage would be a conceptual one and the second would be that they would return for a more formal Preliminary Subdivision Plan. This is not in itself proposing a development, this is for the road and the subdivision of the lots themselves. He will note that present on the property you will see floodplain and wetland areas. The Code stipulates that development in wetland areas and

floodplain areas is not permitted and there are additionally setback requirements for construction of new development from wetland areas and named water bodies as well that will apply to any physical development on these properties. The applicant has submitted with their application Waivers. One is for an alternate lot configuration that reduces frontage on a public street. There are technically five lots that are immediately accessing that end of the cul-de-sac. There is a fifteen-foot-wide strip of the more centrally located Stormwater Management Lot to access from the cul-de-sac. It is really to access the stormwater management area. The second one is an increased percentage of lots on cul-de-sac. Because of the sort of unique form or layout of the existing property, the four parcels that are meant for development to the north would all have to access the cul-de-sac that is proposed as well as that fifth Stormwater Management Lot and then that sixth Residual Parcel would be utilizing that existing frontage on Monroe Terrace. Finally, the applicant has submitted a Waiver Request from the requirement to provide sidewalk along the public right of way frontage of Monroe Terrace. That would be the southernmost part of the existing Monroe Terrace shown at the bottom part of the plan. Planning Staff will note that generally speaking, the infill standards per the Code would apply for development on lots in already developed areas. Such standards would require the implementation of sidewalks and there are several other houses on Monroe Terrace that have provided sidewalks. However, it is not consistent throughout, but Planning Staff would recommend that they do implement the sidewalk on that frontage.

Mr. Burchard stated that everything that Mr. Swierczek mentioned is the substance of their application. They received a number of public comments to which they drafted a response letter which is in the packet tonight on concerns about the flood plain, the stream channel, the wetlands and the buffers, and erosion and sediment control. They have taken a shot at describing what the requirements are to address those matters. They are applying all the standards that are required from DNREC in order to make a plan that is adequately addressing those issues. Their counselor just mentioned this evening that there is some concern that he hadn't heard before about fallen trees that may or may not be obstructing the channel of stream itself. So, they will certainly be addressing these in the Preliminary Subdivision Plan that would come next.

Mr. Hartman stated with the channel that is designated to wetlands is that where you are talking about the fallen trees? Responding to Mr. Hartman, Mr. Burchard stated that it was just brought up to him this evening. He thinks that the channel itself and maybe some of the other woodland areas were of concern. He didn't get specifically what he had heard.

Mr. Hartman asked who would be responsible for maintaining that channel after the development is built? Would it be the property owners of the development or the City? Responding to Mr. Hartman, Mr. Burchard stated that he doesn't know that there is a maintenance schedule established for a natural stream channel.

Mrs. Melson-Williams stated that they have (online attending virtually) the property owner, Mr. Emmanuel Ehize and also his lawyer representative, Mr. Lacy Holly. She isn't sure if they would like to make any comments before we get too deep into Planning Commissioner's questions.

Mr. Holly stated that that he thinks it's important to note that the City's data sheet suggests that a very similar Conceptual Subdivision was previously conditionally approved. That owner did not

follow through and so the conditional approval expired. He would also like to note that the City's data sheet suggests that with this subdivision that the four lots are largely compliant with the zoning and bulk standards. Also, to highlight, the data sheet suggests that of the four variances (waivers) sought of the Planning Commission appears to recommend three of those four. They ask that the Planning Commission decide this on the merits of the law and the land use regulations of the City of Dover. The applicant is appreciative and mindful that there is quite a bit of comment, concerns and objections of nearby neighbors. That is why the applicant made careful effort and spent significant money to have their engineer be prepared to address all seven of their concerns and that they believe that after considerations of the objections and concerns that the discussion by Mountain Consulting through Mr. Kyle Burchard, will show that there are no violations of the City of Dover regulations and any other alleged violations are not even appropriate of this particular proposal with the exception of the four variances (waivers) requested. He would suggest that time be yielded back to Mr. Burchard to go over all seven of the objections on the record. He encourages the Planning Commission to approve the Conceptual Plan.

Mr. Burchard stated that he would briefly go through the concerns raised by the neighbors. There were seven of them and then there were a pair of exhibits. The first was a concern about an obstruction of stream flow which may be wrapped up in the counselor's notification in the hearing tonight but there is nothing that is proposed in the Subdivision that would create obstruction to the flow in the existing blue line stream that is on property. Item #2 is about compliance with Delaware Erosion and Sediment Control Standards. There is to be a complete review and approval by Kent Conservation District; so, there will not be any deficiencies in the construction and post construction erosion control systems. Item #3 is very similar to Item #2, illustrating in the front matter of the Erosion Sediment Control Handbook about the economic impacts of sediment washing into streams and getting downstream. Again, there will be full compliance with DNREC under KCD review. Item #4 was about meeting floodplain requirements. Since there is no touching of the flood zone that is mapped on the property, it really doesn't apply. There are no additional flood plain requirements for the project. Item #5 relates to wetlands and being that they are not proposing any disturbance to any of the wetlands on the property, they are essentially in compliance with all the regulations that are applicable there. The Delaware Land Protection Act (Chapter 75) talks about protecting those resources. In the City Code, there is a requirement to have a stormwater management easement around the flood plain which is proposed; so, they are compliant with that as well. Item #7 is cited in the Kent County Land Subdivision Ordinance about the suitability of land. The layout is not proposing to subdivide buildable land within the floodplain. He is not sure that it's applicable in the City anyway, but we are not violating that anyway. Exhibit A and part of the nature of the letter was concerns about the previous applications and why they did not go forward. He does not have any background in that former application, and he has not seen it. Exhibit B has several mappings which are reflected in their plans of all the flood plain, the stream channel and the wetlands so they are addressing all of that. At this conceptual stage, they just want to clear the air and make sure that everybody understands that they are not into all of the environmental areas that would cause a concern and that would result in flooding on these neighboring properties. Most of the properties are upstream of this property to begin with. He would just like to put it before the Commission that they had to comply with a lot of other regulations in order to get the overall approvals to be able to move forward into construction.

Mrs. Maucher opened the public hearing.

Mrs. Melson-Williams stated that she wanted to enter into the record the public comments that we have received. The first set (Set 1) were public comments that were received as of March 10, 2023 and that was an email and subsequent attachments received from Mr. Steve LeBoon. That is the 7 item letter and that included some signatures of other area residents located along Westview Terrace, Mallard Drive and Crescent Drive which are nearby streets to the west and south of this application. A number of those people have stuck it out online with us tonight. The second set of public comments were additional comments received in the last week and as of 2PM today and they are calling it Set 2. That was distributed by email to the Commission members and also provided on their desks this evening. The first item is Item 2A; an email dated March 11, 2023 from Ms. Jean Taylor. It does reference the previous email that Mr. LeBoon sent and notes her concerns about this proposed subdivision and its affects on neighbors. Item 2B is an email from March 13, 2023 from Mr. Steve LeBoon referencing that email from March 11, 2023 from Ms. Taylor. Item 3 is the March 17, 2023 letter from Mountain Consulting on behalf of the Ekaman Subdivision that gave that itemized response to that public comment Set #1 and that was just reviewed by the project engineer, Mr. Burchard.

Ms. Jean Taylor – 1017 Westview Terrace Dover, DE 19904

Ms. Taylor stated that if it ever rains in the next couple of weeks, please take a drive through their neighborhood. She is not sure what's happened over the years. They have been there for 20 years and increasingly, the water rises in the streets and the sewer don't seem to be managing things well. She is not sure if it's the runoff ponds and streams in our areas but it's bad enough that they seriously have had teenagers water surfing well on their streets during significant storms. She is seeing Lots 1-4 on the diagram shown on the screen, but she heard you say that 6 is the area of wetlands but you mentioned a Lot 5. For the life of her, she can't find a 5 on the diagram. Responding to Ms. Taylor, Mr. Burchard stated that it is labeled SWM and RESID.

Ms. Taylor stated that their concern is just even with any additional development, unless there is something significant that happens with the way that water is channeled away from the properties, any additional impermeable areas. They are just very concerned that they are going to increase the amount of water that they are already feeling and that is rising over the years and affecting their properties. If this is going to happen, then it would have to happen with a lot of assistance to prevent water damage from occurring with some very specific native plantings or some restructuring of waterways and pipes. That is really a huge concern for them on Westview Terrace.

Mr. Steve LeBoon – 1025 Westview Terrace Dover, DE 19904

Mr. LeBoon stated that this is very serious. With the 7 items that they have illustrated, they protect the neighbors. This would be catastrophic. The water from his back property is a flood plain. The flood plains that have been illustrated according to the previous owner is over 70 years old. They are so outdated, that the flood plain would include all Woodbrook and the surrounding neighborhood. On August 4, 2021, they had a very serious tornado. That is when the previous owner, he would like to set the record straight because he articulated to him that he could not building back there because of the flooding and due to the utilities. He is saying that

the plans expired. It expired because they couldn't do it. He would like this Committee to take some time to think about it and really look into it and research how these statutes and codes protect the homeowners. Finally, he is asking for a full denial on the legal merits based on what's been furnished to this Committee.

Mrs. Cassandra LeBoon – 1025 Westview Terrace Dover, DE 19904

Mrs. LeBoon stated that when she listens to the responses to all of the concerns from Mr. Holly, all of the responses seem to dismiss everything that they have put forward and they are just supposed to believe that they are going to figure it out and do what's right. They take care of them on the four streets that will be affected by this subdivision. She knows that it is at a preliminary stage, but they should have come prepared for more than just "we will be in compliance." It seems nonchalant that they are just sort of brushing them away and saying, "just trust us, we will take care of you." That is why they put all of the time and effort into looking into the different statutes and looking at the protections that are out there for them. It is evident for the people before them that sometimes developers tell you one thing and then then come back and do a different thing. She is sure that all of her neighbors agree with her and if they need to, they can get more people.

Mr. Holly stated that he understands that the neighbors are concerned and very passionate as they should be about their home. But not one of them cited a particular statute or regulation this evening; it may have been in some of their emails. That is why they have in fact addressed all of the objections in the writing that has been submitted and will be part of the record. The proposed Subdivision infrastructure improvements do not propose any work within 100 year FEMA floodplain. The existing floodplain and blue line stream buffers on the property are very dense and won't be touched. On the economic impact of the floodplain requirements, Mr. Burchard has taken very careful time to respond to each and every one of the seven objections. The neighbors can express their opinions that his professional opinion is incorrect but to say that they haven't responded to their concerns, he doesn't believe is accurate. He would ask that the Conceptual Plan be approved and note that of the four variances (waivers) that they need, the Planning Office recommends three of those. They ask that the Conceptual Plan be approved, and he would like Mr. Burchard to be more specific and technical on his particular responses on the neighbor objections. They made quite a bit of effort to get Council that has much more experience in front of this Commission. He is a practicing attorney in land use and real estate in New Castle County. Mr. Burchard has very detailed responses to the neighbors' concerns and he would ask the Planning Commission consider that this very similar Subdivision Plan that has previously been approved. All of the bulk requirements under the regulations for the four lots that are intended for immediate commercial development and that the owner of Wyoming, LLC. should be able to do what they want to do with the property as long as it complies with Dover regulations, and they contend that it does.

Mr. Burchard stated that he was trying to be brief with the Commission because of the written statements to respond to the neighbor's concerns. All of these measures are in place to protect their property and their rights. They are compliant with all of that and it is a matter of proving it in the design with other review processes in order for that to be enacted. He can't presuppose the final design before it actually happens. If there are maintenance issues within the subdivision that have affected their drainage system that need to be taken care of. He doesn't know whose

responsibility that is. It may be the City or the homeowners association if there is one and that might be worth looking into.

Mrs. Maucher closed the public hearing.

Mr. Hartman stated that the earlier question that he asked about maintenance, he was looking at the *Code of Ordinances*, Section 42-1 Drainage Courses of Private Property. It lists two scenarios: maintenance by the City, where surface water naturally flows over private property forming a surface water drainage course, of which said private property is not subject to an agreement by the property owner. That type of surface water drainage is required to be maintained by the City. There is another one where it's the property owner's responsibility to manage their surface water flows into other private properties. On those four lots when the residences will be built, who will be responsible for the drainage if it goes towards the people who are having the problem? Responding to Mr. Hartman, Mrs. Melson-Williams stated that this Subdivision Plan will be subject to a Stormwater Management Plan that would need to meet the Delaware Sediment and Stormwater Management Guidelines. They are limited that they can't increase what is already coming off of their properties onto properties of others with those regulations. She would let you know that this is a challenged watershed overall. It drains ultimately, a very significant area of the city. But they will be dealing with the impacts on their individual properties. The City would not be the one responsible for managing the stream that is there and likely with the subdivision, there would have to be some type of maintenance organization for any of the open space areas that support those lots. That would be certainly something to come forward in future steps in a Subdivision Application process.

Mr. Hartman stated that the Surface Water Management Plan that is required would require that the surface water not be drained towards other personal property. Responding to Mr. Hartman, Mrs. Melson-Williams stated that is basically how it works. You can probably refer to the engineer that is standing before you because this is an engineering standpoint. We also have Mr. Jason Lyon who is the City Engineer that is hopefully still available if you want to go to him for the questions that he may have knowledge of. But their management of stormwater is a big deal.

Mr. Burchard stated that he doesn't have the full answer as to who is responsible for the maintenance. It seems is if there is a bit of a possible conflict there and it doesn't seem to quite make sense. He would agree that Mr. Lyon would have a better idea of how the City maintains open waterways that are known blueline streams and if that falls under the City maintenance requirements. If it's required of the applicant to maintain it and that is the determination that happens, then that's what will be the determination.

Mr. Hartman asked if the plans would include grading that divert stormwater away from the residents that are already having a problem. In response it was stated that for this particular property basically, there is a plateau at the top of the property that then falls away to drain towards the blueline stream that runs through it. Other than a yard as it is today, the yard would have incremental amount of additional runoff that would flow off of it but it's not much different than the meadow that it is today. The grass areas that would head into the alley that is between the properties flows down to the headwall that begins the origin point of the stream.

This particular property and the developed portion of this property would be controlled to not worsen whatever the existing drainage problems are with those adjacent residents to the west or to the north or to the east should they all need to flow towards the stream.

Mr. Hartman stated that he appreciates the applicant's submittal. His main concerns are with the existing problems with the area. This was in one of the references submitted by the people who are opposed to this. They mention a City Council Meeting on July 12, 2021, where Councilman Taylor showed a series of photographs of some of the problems over there. Most of it looked like it was that pond west of Westview Terrace. One of these photographs shows an area where water is supposed to come out under Westview Terrace and is nothing but woods that impedes the water flow. Councilman Taylor went on to say that the issue was a high priority, and they need to look at the flow of water and how it is changing the landscape. His question is was anything done after that presentation by Councilman Taylor? Responding to Mr. Hartman, Mr. Swierczek stated that would be something that would likely be coordinated by the Public Works Office if it's looking at to sort of mitigate stormwater management or what part the City plays versus private property owners. That would not be something that the Planning Office wouldn't participate in because that would be something done in the Public Works Office.

Mr. Hartman stated that it seems that the Planning Office should be very concerned about this and he believes that the Planning Officer is actually the Floodplain Administrator for the City of Dover. Responding to Mr. Hartman, Mrs. Melson-Williams stated that the City Planner is named as the Floodplain Administrator and they do have Mr. Jason Lyon, the City's Engineer that can probably speak to some of the questions and issues related to the difficulties experienced on Westview Terrace.

Mr. Lyon stated that with regard to the Westview Terrace, he is familiar with the City owning that pond and we are working on trying to clear that out and dipping it out to get a little bit better retention there. His recollection with blueline streams is that it's to the ownership of the property that it is on. This certainly came up at the Puncheon Run which is just south of this blueline. That issue has come up before where there was some damage of trees that had fallen into the Puncheon Run stream and it was the owner's responsibility for clearing that out. They went to the State for clarification on that. He does not see any difference with this specific situation as the blueline that is going through this developed property is not the City's property; it is a property owned by private development. He would echo Mrs. Melson-Williams' point about the runoff as Kent Conservation District will not allow this development to be approved if there is additional runoff from pre-development to post development. What that means is, when a rain event happens, the amount of rain that came before development into that ditch or the floodplain cannot be increased at post development.

Mr. Holly stated that to assume that is it going to increase the runoff is at best premature. He defers greatly to the Commission and to Mr. Lyon, but we can't presuppose that the development is going to increase the runoff. They understand that they are not going to get approval if it does, but he would ask the Planning Commission not to make a decision based on an assumption ahead of the game that water runoff is going to increase after the improvement. Their engineer doesn't agree that that's what will happen, but they understand that they can't

get approval unless it doesn't increase the stormwater management runoff after the construction is constructed.

Mr. Hartman stated that based on what Mr. Lyon said, that blueline stream would be the applicant's. Responding to Mr. Hartman, Mr. Burchard stated that's what it sounded like, and he would ask Mr. Lyon as to the permit requirements to have equipment in the blueline stream to remove big logs and things that might be obstructing flow.

Mr. Hartman asked how much work you could do in a wetlands area like that? Responding to Mr. Hartman, Mr. Burchard stated that that was the point of his question.

Mr. Hartman stated that he understands what they are up against, but he knows that there are things that can happen applying to the (Army Corps of) Engineers for access or work. They have seen that at Dover High School where that was done at that pond. His concern remains with the Planning Office because this particular area has been brought up by City Council as problem and a priority area to look at. Out of Article 1, Section 50-4 "basis for establishing special flood hazard areas: The City of Dover may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies." The question to the Planning Office is, has this been done in the area? Has research on a local flood hazard area been done in the area? Responding to Mr. Hartman, Mrs. Melson-Williams stated that there are no locally designated flood hazard areas that have gone through that process. There are provisions in our Code to do so, but there have not been steps to take that with any properties here in the City of Dover.

Mr. Hartman stated that one of the requirements of Article 2, Section 50-21 of the Floodplain Administrator is to "review application for permits to determine whether proposed activities will be reasonably safe from flooding and interpret floodplain boundaries and provide flood elevation and flood hazard information." It just seems to him that if they have had historic problems in this area then that's something that the Planning Office would have looked at in the past. Responding to Mr. Hartman, Mr. Burchard stated that is sounded like Mr. Lyon was addressing a maintenance issue upstream which could certainly affect what these neighbors on Westview Terrace have been experiencing.

Mrs. Maucher asked once the stormwater pond was built, who is responsible for the maintenance of that stormwater facility. Responding to Mrs. Maucher, Mr. Burchard stated that there will be an HOA established that is required to set that up. There will be an agreement put in place so that that is funded and taken care of.

Mrs. Maucher asked if the HOA would be for four properties only. Responding to Mrs. Maucher, Mr. Burchard stated that it is a very small HOA.

Mrs. Maucher asked if the developer was intending to pre-fund because there is quite an expense with stormwater management ponds. A big issue in the State is that property owner HOA's are not equipped to deal with them and do not have the money or expertise to deal with

them. The working out the extent of what the facility may look like with KCD to make sure that it's appropriate for this position in the floodplain is part of their next steps to workout. He doesn't have the answer to the funding issue and how that would work. He would say that there is a review with the Planning Commission and certainly that will be something that will need to be addressed.

Mr. Cooper stated that by approving this, should that motion get made, they are merely sending this onto the next steps so that they can get that Kent Conservation District information and everything else that goes on. They are just approving this to get more answers and more questions for the next step, correct? Responding to Mr. Cooper, Mr. Burchard stated that is correct.

Mrs. Melson-Williams stated the subdivision process is a multi-step process. This is the initial concept where they give you the basic sense of this is what we would like to do for a road and a lot configuration. The second step is called the Preliminary Subdivision Plan and with that step you get greater detail on some of these engineering questions. But ultimately there is various delegated agencies that have technical review responsibilities much more intense than what you are doing here, and the stormwater management must be in compliance with the Delaware Sediment and Stormwater Management Regulations. They will be working closely with the Kent Conservation District on that. This evening you are really dealing with the concept of the subdivision layout. It is an allowable use as noted in the R-10 (One Family Residence Zone). They do have several Waiver Requests. One of them they kind of grouped together with the first one being the Alternative Lot Configuration and Reduction Frontage on a Public Street for that Stormwater Management Area Lot. The number two Waiver Request is related to the Increased Percentage of Lots on the Cul-de-sac. The third Waiver is the request to eliminate the sidewalk requirement along the public right of way frontage of Monroe Terrace (that southern piece that comes back out to front there). There are three Waiver Requests. These are Subdivision Waivers, so the Planning Commission makes a recommendation, and they carry that recommendation forward through a City Council review process of those Subdivision Waivers.

Mr. Holly asked that for the record, is he correct that the Planning Staff did recommend all of the waiver requests except for the sidewalk? Responding to Mr. Holly, Mr. Swierczek stated that the Planning Staff has recommended approval of all but the sidewalk waiver request. The Planning Commission will take the recommendations into consideration.

Mr. Hartman SB-23-01C Lands of Wyoming, LLC at Jefferson Terrace Extended (Ekaman Subdivision): Conceptual Subdivision Plan that based on the testimony of the applicant tonight and the Planning Staff write up in the DAC Report (be approved) and subsequently approve the Alternate Lot Configuration and Reduce Frontage on a Public Street for the Stormwater Area Lot, the Increased Percentage of Lots on a Cul-de-sac. And he recommends that they deny the Waiver Request for the Elimination of the Sidewalk on Monroe Terrace Frontage of the Residual Lot, seconded by Mr. Cooper and the motion was carried 7-0 with Mrs. Denney and Dr. Jones absent. Mr. Hartman voting yes; based on the motion that he stated. Mr. Baldwin voting yes; based on the aforementioned statements. Mrs. Welsh voting yes; for reasons stated. Mrs. Malone voting yes; for reasons stated. Mr. Cooper voting yes. Mr. Roach voting yes; for

reasons stated.

NEW BUSINESS

Meeting adjourned at 11:32 PM.

Sincerely,

**Kristen Mullaney
Secretary**