

**MINUTES**  
**CITY PLANNING COMMISSION**  
**February 19, 2019**

Present: Desmond Baker (Acting Chair), Lloyd Budd, Joseph Chickadel, J. Brett Taylor, and Anthony J. Hill (Commission Members); and Herb Inden, Gwineth Kaminsky, Tim Lucas, and Jessica Molina (Planning).

The meeting was convened at 6:00 p.m. by Desmond Baker.

**REGULAR MEETING**

**Approval of the minutes of the December 18, 2018 Planning Commission Meeting**

Mr. Baker asked the Commission to make a motion on the minutes of the December 18, 2018 City Planning Commission meeting. Joseph Chickadel moved to approve the minutes, and Anthony J. Hill second the motion. All present members voted to approve the minutes.

**New Business**

**Resolution 01-19: A proposal to remove Torbert Street, between Washington and West Streets, from the Official City Map**

Gwineth Kaminsky, from the Department of Planning and Development, presented the proposal for Resolution 01-19. Ms. Kaminsky discussed Torbert Street's location, ownership of parcels adjacent to Torbert, current land use and zoning around Torbert Street, and existing vehicular circulation patterns. She explained that the Applicant, Washington Street Properties, LLC, is the sole owner of all the parcels located along Torbert Street, and that the Applicant also owns an additional 6 parcels within the block. She elaborated that according to the Applicant, the street removal would allow the Applicant to gain better control of their campus and allow additional investment in the City and Midtown Brandywine community through future improvements to the immediate area, including improved parking and internal circulation, cobblestone walkways, and decorative lighting. She said the Applicant was also seeking to install a sign advertising the various businesses within its campus. The City Code requires businesses being advertised to be on the same parcel as the sign, and since the various businesses are on separate parcels, they must be consolidated. Consolidation, which is handled by New Castle County, cannot take place until Torbert Street, which bisects the properties, has been vacated, because all parcels must be contiguous to be consolidated.

Ms. Kaminsky then presented a series of photos to show the existing condition of Torbert Street. The photo slides began at the intersection of Torbert and Washington Streets and ended at the intersection of Torbert and West Streets. She mentioned that Torbert Street's surface was in poor to fair condition and in need of repaving, and that there is little to no curbing along most of its

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length. She also noted that the parking along the roadway is situated on private property. Current development on Torbert Street was discussed, such as the development of properties 303-305-307 Torbert Street, which involve the rehabilitation of a vacant structure, location of an outdoor courtyard, and a change of elevation within the block that would be addressed as part of the new development. She stated that access through the block will remain open to vehicles and pedestrians as a part of this new development.

Ms. Kaminsky also shared the comments of the Department of Public Works, Fire Marshal's Office, and the Department of Planning regarding this proposal.

The Public Works Department's Sewer Division advised that there are 8" and 10" terra cotta sewer mains which run through Torbert Street, and the Water Division noted that there is a 4" cast iron water main within the right-of-way as well. Therefore, access easements will be required for all of these utilities as a condition of the street removal. The Department of Public Works was supportive of the street removal request.

The Public Works Department's Transportation Division advised that Torbert Street does not provide any substantial benefit to the City's transportation network, but still requires maintenance and lighting as a city street. Also noted were two issues to be addressed under separate agreements, including indemnification, in which the City is held harmless for any loss of business during utility repairs, and the issue of restoration, in which the property owner is responsible for restoring the surface over any required utility repairs. The Transportation Division supports the street removal request.

The Fire Marshall's Office advised that they were not opposed to the request to remove Torbert Street, because the physical street will remain open, providing access for emergency responders. Other conditions for approval include: 1) all properties being owned by a single owner; and 2) the life safety systems, which are currently separated in each structure, cannot be combined.

The Planning Department noted that Torbert Street does not significantly contribute to the general circulation or traffic distribution pattern in the immediate area. Because access will remain open through the block, there are no findings to suggest that removing Torbert Street as a City street would create a detriment to the surrounding properties or general public. The department recommends approval of the street removal subject to conditions cited by the other City departments.

Ms. Kaminsky finished her presentation by going over the procedures for city street closing and right-of-way dispositions and discussing the public notice procedures that were followed. She concluded by stating that Resolution 01-19 recommends to City Council that Torbert Street, between Washington and West Streets, be removed from the Official City Map, subject to City Department comments.

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Mr. Baker asked the Commissioners whether they had any questions or comments. Mr. Hill asked if the sewer and water mains run all the way from Washington to North West Streets or partially. Ms. Kaminsky replied that she did not know specifically, but she was aware that an easement would be required. Mr. Hill then specified that if the utility lines ran across the entire street, no construction could take place above, to which Ms. Kaminsky agreed. Mr. Hill was also uncertain if the C-2 zoning was high or low intensity as the commercial zoning goes from C-1 to C-5. Ms. Kaminsky clarified that C-1 was the lower intensity district.

Mr. Taylor asked if the property owners were going to maintain the street for snow plowing purposes to which Ms. Kaminsky replied that the property owners have been maintaining the street and would continue the maintenance. Mr. Taylor also wondered if the impervious surface of the road would apply toward the owner's stormwater management fee. Ms. Kaminsky confirmed that the impervious surface would be applied to the owner's stormwater management fee, once the property was required.

Mr. Baker then asked if the traffic signage on Torbert Street would be retained. Ms. Kaminsky clarified that the applicant will be working with Public Works to maintain the signage.

Mr. Chickadel then shared that he received information that stated that the Fire Marshall will require Torbert Street to remain open between Washington and West Streets. The street width would be required for a firetruck to address a fire in mid-block, so the street would be maintained. Mr. Chickadel then asked if any of the new paving or courtyard would take place in the street's right-of-way area. Ms. Kaminsky replied that the preliminary drawings for the restaurant proposal show that the access along Torbert Street, from Washington to West Streets, were being maintained. She explained that there might be some encroachment since the property owner has expressed interest in building some sidewalks along the right-of-way as part of improving the site's circulation and aesthetics.

Mr. Baker asked if there were any additional questions or comments from the Commissioners. There were none. Mr. Baker then asked if the applicant's representative was present. Ms. Kaminsky notified Mr. Baker that the applicant's representative was on his way, but she suggested to proceed with the meeting and receiving public comments. Mr. Baker accepted public comments, and ten Midtown Brandywine residents expressed their concerns, which included the loss of neighborhood character, block parties, and daily access through Torbert Street.

Residents expressed their appreciation of the neighborhood's small streets and character. They believed that the removal of Torbert Street and consolidation of all of the Applicant's parcels may allow mass development in the future and change the neighborhood's historic small scale. Ms. Kaminsky explained that no plans were discussed with the Planning Department to demolish all properties. All plans shared show the retention of existing restaurants and the addition of a new one. She also elaborated on the site's zoning and clarified that five of the parcels on the north side of Torbert Street were zoned R-3. She said that the City had no intention of changing the zoning. The reasoning was that these R-3 parcels buffered the residential portion of Midtown Brandywine from the commercial strip. She explained that the historic properties were an unusual situation. The historic properties abutted C-2, but they historically had been

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commercially used though they were zoned R-3. There was a hardship established on the properties which was why they received a use variance. But the existing zoning determines the density of development regardless if it was 1 parcel or 17. Therefore, no mass development could occur on the R-3 parcels, regardless if they were consolidated with the C-2 parcels.

The neighbors also saw block parties as a threat to the neighborhood's character. They were concerned that block parties would use some of the restaurant's parking spaces as open space. The temporary removal of these parking spaces would increase demand on the neighborhood's limited parking supply. In addition, the neighbors were also concerned with foot traffic and noise beyond the patio, disturbing the neighborhood's quiet and tranquil ambiance. Ms. Kaminsky clarified that there had been no discussion of block party events and that the restaurant and activity related to the restaurant was moving forward independently of the street action request. She reminded all meeting participants that the goal of the street action was to enable signage and street improvements.

The Midtown Brandywine residents were not certain if they would be able to use Torbert Street if the street was to be removed from the City's map. They explained that they used Torbert Street daily, either by foot or car, and clarified that the street was not just used by the restaurant patrons. In addition, because of Torbert Street's frequent use, neighbors believed that if the street was to be closed, a traffic study should be conducted. Mr. Thomas Carney, legal representative of the developer, arrived at the meeting and addressed some of the comments. Mr. Carney and Ms. Kaminsky clarified that the street's removal will be conditioned upon to maintaining open access and that Torbert Street could not be shut down.

Other additional concerns included the existing parking conditions, consolidation of parcels, lack of trust, and property values. Some of the neighbors expressed that gravel lot surfaces and the existing change of elevation in the parking area were not acceptable or code compliant. Other neighbors were concerned about valet parking. Ms. Kaminsky explained that the City had no control over valet parking on private properties, and that parking was an allowed accessory use. She mentioned that the difference in grade elevation would be worked out as the parking lots were improved. Other neighborhood residents questioned New Castle County's requirement to consolidate all the parcels in order to approve the requested sign. Various neighbors expressed that they would rather have a variance and offered to support the developer as needed. Other neighbors shared their lack of trust on the developer, either because of the gravel parking on other sites or the uncertain future or intentions of the business. The neighborhood residents explained that they felt more comfortable if the City owned the street. They believed that they had more input as they could reach local representatives or participate in future meetings regarding the conditions or plans for the street. One of the neighbors also shared a letter from a real estate agent who stated that the restaurant activities could decrease property values.

As the neighborhood residents shared their opinion, the Commissioners raised concerns and requested further clarification on the street removal request and possible impact if the request was granted.

Mr. Baker wondered if any community outreach had taken place. Ms. Kaminsky explained that public outreach was conducted by the developer for the redevelopment of the historic sites and

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rezoning, but not for the removal of Torbert Street. This statement was confirmed by Mr. Carney. Mr. Baker asked if the vacant property fees were up to date since the historic properties were vacant for 30 years. Ms. Kaminsky said that she believed so.

Mr. Budd asked if the developer had set-up a timeline for the completion of the proposed site developments. He wanted to make sure that the developer was not going to take 20 to 30 years. Ms. Kaminsky replied that the owner has moved forward with permits and partial demolition for the restaurant use. She clarified that the developer had not presented a timeline, however. Mr. Carney told Mr. Budd that the restaurant had been designed and that the rest of the site was simply parking. At the moment, there were no additional proposed developments on the site beyond that. Mr. Chickadel also wondered about the timeline for road upgrades, street upgrades, sidewalks, etcetera. Mr. Carney explained that these were long term goals, to make the entrance more attractive, and that there were no specific plans yet. He clarified that the consolidation request was mainly because of the requirements to allow signage to advertise all the businesses on site.

Mr. Hill asked for confirmation that the developer was not intending to build a large structure on the consolidated parcels and restated that this would not be possible due to the utilities under Torbert Street. Mr. Carney confirmed and agreed with Mr. Hill. Mr. Hill then stated that Torbert Street would remain as a right-of way to which Mr. Carney agreed.

Mr. Baker was also concerned with potential noise from the outdoor patio. He stated that he was aware that this was being worked out. Ms. Kaminsky agreed and explained that there were noise ordinances to control abatement; the applicant was working with a noise consultant; and that the outdoor section of the restaurant would have limited hours of operation. Mr. Baker was also concerned with the access to Torbert Street. Mr. Baker asked Mr. Carney to elaborate on any changes if the developer gained ownership. Mr. Carney said that if the developer gained ownership, the sign behind Washington Street would change. He stated that the City would continue to hold the utility easements and their access across Torbert Street would be required. To clarify, Mr. Baker asked Mr. Carney if left turns would still be permitted onto Torbert Street, to which Mr. Carney replied affirmatively.

Mr. Chickadel noted that the term “block party” was vaguely used throughout the meeting and a clear definition had not been made. He explained that his interpretation was a street filled with pedestrians, and he was concerned that firetrucks would not be able to go through the street. He asked Mr. Carney to explain what exactly the developer meant by “block party”. Mr. Carney said that he did not know since this had never been discussed. With respect to the event, he clarified that the developer did not need street ownership or the vacation of the street to have a block party. He stated that the owner could do it as a matter of right, and this was not the objective of the removal of Torbert Street. Mr. Chickadel stated again that he envisioned Torbert Street full of people and was concerned. Mr. Carney replied that block parties would require a special permit.

Mr. Hill notified the Commission’s Chair and all meeting attendees that he had a scheduling conflict and had to leave. He apologized and informed Mr. Baker that he had no objections if further consideration was given to the resolution or if the vote was called during the meeting.

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Mr. Chickadel asked Ms. Kaminsky that if the developer gained ownership of the street, would he still have to go through another hearing for the approval of on-site improvements such as the pavement, patio, and street improvements. Ms. Kaminsky confirmed that the developer still has to pull permits for the parking lot configuration, even if they are granted the ownership of Torbert Street. Mr. Chickadel stated that the Commission had not seen any graphics or plans for the site. He emphasized that he strongly believed that people present at the meeting did not understand what is going to happen to Torbert Street, other than what they have been told regarding required access and utility easements. He suggested that a site plan would have been very helpful and could have addressed many of the community's concerns. Mr. Carney explained that community outreach had taken place to discuss the site plan, which included the three restaurants (Mikimotos, Washington Street Ale House, and the new restaurant) and the parking layout as part of the Wilmington Design Review and Preservation Commission (DRPC) process from Fall 2017 throughout the beginning of 2018. He confirmed that many of the current concerns were similar or identical to what they had heard throughout the process. He then clarified that the use variance requirements were fundamentally met and that the developer was not required to include the community in the process. He then informed all meeting attendees that the outreach process was done in good faith to keep neighbors as potential customers and reminded all present that the street removal request was done for the purpose of signage. Mr. Chickadel then mentioned that there was no way the Fire Department could fight a fire if the streets were blocked off in any shape or form, unless Fire Marshals were stationed on both ends of the street, which had been done before.

Mr. Baker asked Commission members if they had any additional questions. There were no additional questions. Mr. Baker stated that there had been enough discussion and that the public will continue to have access to Torbert Street. He disclosed that he was still concerned about the noise, but he understood that noise was being address. Council Member Michelle Harlee was present at the meeting and told the Chair that she would like to make a few remarks before the Commission made a motion. Mr. Baker invited Ms. Harlee to the stand.

Ms. Harlee introduced herself and greeted the community members and Commissioners. She suggested, based on all the comments made, that the Commission postpone the vote on the resolution, to allow a meeting between the developer and the community. It was clear to her that that there were several meetings related to the use variance for the property, but no meeting was held for the Torbert Street removal. Ms. Harlee noted that the community still had questions and stated that there was no harm in postponing the vote. She stated that maintaining the community together with long lasting homeowners should be a priority and that it was the right thing to do. Mr. Carney responded that he was opposed to the request, because all the public comments were regarding the underlying use and not the street removal. He stated that the comments were related to issues that were long vetted and that the Commission had no control over. In addition, Mr. Carney explained that there would not be a benefit to meeting since there had been many meetings between the developer and the neighborhood residents, property owners, and associations. He then explained that the basis for the Torbert Street removal request was the signage which had turned into a very expensive proposition for the developer, in order to advertise for his businesses and take down an existing billboard which is no longer permitted by the City of Wilmington's Zoning Code. Mr. Carney reiterated that he was opposed to Ms.

Harlee's request as there was nothing further to be discussed, since all public questions were regarding use.

Mr. Chickadel agreed with Mr. Carney and reminded all meeting attendees that the Commission was not there to judge how the property was going to be used. The Commission would only determine the merits of the street removal. Mr. Chickadel declared that he was more concerned about access through the block. He believed that all the other issues could be resolved by other means, other Commissions, or members of Council. Mr. Chickadel then read the second line of the resolution and suggested it to be amended with the language, "but under no circumstances the access by pedestrians or vehicular traffic be impeded period". With the amendment, he would be prepared to vote on the resolution. Ms. Kaminsky clarified that to revise the resolution, a second and a vote would be needed, and then the Commission could proceed with the amended resolution. Mr. Chickadel made a motion to proceed with the amendment as stated. Mr. Taylor seconded the motion. The Commission voted to amend Resolution 01-19. Then, Mr. Baker called for a motion to adopt the amended resolution. Mr. Chickadel made the motion, and Mr. Brett second the motion. With Mr. Chickadel, Mr. Taylor, and Mr. Baker voting to approve, and Mr. Budd abstaining. Resolution 01-19 passed. Mr. Baker notified the community members that they could work with their Council representative regarding some of the things they would like to see included in this agreement.

**Resolution 02-19; MS-19-01: Subdivision application from Rummel, Klepper, and Kahl, LLP, on behalf of the Riverfront Development Corporation, which proposes to subdivide three existing parcels into five new parcels. One of the parcels is proposed to be dedicated to the City for a new public right-of-way and added to the Official City Map.**

Before the presentation for Resolution 02-19 began, Mr. Baker disclosed that he was a board member of the Riverfront Development Corporation (RDC). He stated that his customary policy was to always vote, and his vote was based on the public's interest.

Tim Lucas, from the Department of Planning and Development, presented the proposal for Resolution 02-19; MS-19-01. Mr. Lucas explained that the proposal was considered a major subdivision and was subject to review by the Planning Commission because the site was larger than 2.5 acres (4.06 total site acreage), because portions of the site were within regulatory floodplain boundaries, and because a portion of the site was proposed for use as a public street. He presented a map that showed the general location of the subject site and related street network. The site was located to the east of South Market Street, between Garasches Lane and the southern City of Wilmington municipal boundary with New Castle County.

Mr. Lucas then presented a graph with the existing three subject parcels in red and superimposed the proposed parcels in blue. It was brought to Mr. Lucas' attention that the projector was not displaying the image; Commission members were able to follow the presentation through printed materials. Mr. Lucas continued his presentation and shared an aerial illustration with the same areas shown before. This aerial was created to better illustrate the context. He showed the portion of Garasches Lane that was recently vacated and the proposed new street that would connect the South Market and South Walnut access roads to Garasches Lane.

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He then presented a general plan of the newly designed street network. The plan displayed the recently dedicated right-of-way connecting South Market Street with Garasches Lane, the proposed right-of-way being considered, and the remnant of the South Market and South Walnut access road network, which was immediately outside of the City limits. He explained that this section would continue to be maintained by the Delaware Department of Transportation.

Next, Mr. Lucas shared the comments of the Fire Marshal's Office, Department of Public Works, and the Department of Planning regarding this proposal, as follows:

The Fire Marshal stated that since the new road segment is longer than 300 feet, State Fire Code requires fire hydrants to be located at 300-foot intervals. The applicant should contact the City Fire Marshal's Office to determine if any new hydrants are required.

The Public Works Water Division Engineer stated that there is no existing water infrastructure in the parcel area proposed for the new street. No new drinking water infrastructure is required, as existing water lines will service the proposed tax parcels.

The Public Works Sewer and Stormwater Division commented that plans for the proposed street must be coordinated with and reviewed by the City's Sewer and Stormwater engineer.

The Public Works Transportation Director indicated that the City will need to enter into an agreement with the State of Delaware/New Castle County for snowplowing services, as the proposed street transitions into a state-maintained road at the City/County boundary.

The Department of Planning and Development required the following revisions:

Plan Sheet 1 only:

1. Add a north arrow to the Vicinity Map.
2. Correct the City/County boundary line on the Vicinity Map to reflect the recently annexed parcels.
3. Remove tree/shrub symbology from the drawing.
4. Remove all private signage symbology and labels from the drawing (e.g. billboards).
5. Remove all fences and related labels from the drawing and legend.
6. Remove the lines and labels (e.g. "DP-E-OH") from the drawing but retain the utility pole symbology.
7. Remove labels and symbols from the drawing which are not required, helpful, or accurate, including: "junkyard", "gravel", "concrete", "hot-mix", "pile", "gate", etc.

Plan Sheets 1 and 2:

8. Add the City/County boundary to the plan as a unique line type and add it to the legend.
9. Add the appropriate plan scale as a ratio (e.g. "1:20") below the Graphic Scale bar.
10. Remove the recently vacated and removed portion of Garasches Lane from the drawing and move the street label accordingly.
11. Identify and label on the drawing any land recently acquired or to be acquired by RDC from DelDOT.



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12. Correct the right-of-way lines at the new terminus of Garasches Lane to reflect the recently dedicated unnamed street (formerly known as “Hessler Parcel #3”), and label it as “Unnamed City Right-of-Way”.
13. Reduce the contour lines shown to 5’ contour intervals only.
14. Remove all marked and labeled point/spot elevations from the drawing.
15. Relabel “South Walnut Street” to “South Walnut Street (Access Road)”.
16. Add a line to the drawing marking the planned new terminus of the South Walnut Street Access Road.
17. Add a label for “South Market Street / DE Business Route 13”.
18. Reduce the line weight for the five parcels on the left of the drawing, currently outlined in bold, as they are not part of the subdivision.
19. Add the new field house building footprint to the plan.

Mr. Lucas concluded his presentation by stating that the Department of Planning and Development recommended the approval of Resolution 02-19, including the approval of the South Road Connector preliminary subdivision plan. The Department of Planning further recommended that City Council approve the proposed new City right-of-way, which would be added to the official city map. He also noted that all comments must be incorporated into the final plan submission prior to recordation.

Mr. Baker asked the Commission members if they had any questions. Being none, Mr. Baker asked Mr. Lucas if it was usual for the site plan to have a draft stamp. Mr. Lucas responded that the engineer decided to put the stamp on the drawing, but the stamp would be removed on the final plan. Mr. Chickadel was concerned with the number of revisions from the Planning Department and asked if this was customary or was it due to the complexity of the project. Mr. Lucas explained that this was the second draft of the subdivision plan, and the engineer assigned to the project had never submitted a subdivision plan to the City. Mr. Lucas noted that he sent an email to the engineer with extensive suggestions on a lot of the information that was missing. Most of the suggestions were addressed and the remaining revisions were fine tuning. He then specified that since the final plan becomes a legal document once it is recorded, the New Castle County Recorder of Deeds and Land Use Department need clear data to update the City’s and County database. The executive director for the RDC, Megan McGlinchey, was present at the meeting. Mr. Baker asked if she had any comments. Ms. McGlinchey had no comments and apologized for the submitted subdivision plan not being up to City standards. She explained that they had recently lost their head engineer.

After the Commission members confirmed that they had no additional questions, Mr. Baker called for a motion. Mr. Budd made a motion to approve Resolution 02-19. Mr. Chickadel seconded the motion. With all members being in favor, Resolution 02-19 was approved.

### **Adjournment**

Mr. Baker called for a motion to adjourn the meeting. Mr. Chickadel moved to adjourn, and Mr. Taylor seconded the motion. All members being in favor, the meeting was adjourned at 7:52 p.m.