

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

March 1, 2016

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Jeremy Firestone
Willard Hurd
Edgar Johnson
Frank McIntosh
Robert Stozek

Commissioners Absent: None

Staff Present: Maureen Feeney Roser, Planning and Development Director
Michael Fortner, Development Manager

Mr. Silverman called the Planning Commission meeting to order at 7:03 p.m.

Mr. Alan Silverman: I would like to call the City of Newark Planning Commission meeting for Tuesday, March 1, 2016 to order.

1. THE MINUTES OF THE FEBRUARY 2, 2016 PLANNING COMMISSION MEETING.

Mr. Silverman: Commissioners, you have copies of the minutes. Are there any additions or corrections? Maureen was telling me that rather than using the professional transcription service, Michelle took it upon herself to do the listening and transcribing. And these are actually a much cleaner set of minutes than the professionals do. So thank you very much.

Ms. Michelle Vispi: You're welcome.

Mr. Silverman: Okay. And I'll give Frank a second to get his hat off.

Mr. Frank McIntosh: Carry on.

Mr. Silverman: If there are no additions or corrections, the minutes stand accepted as distributed.

2. REVIEW OF AN AMENDMENT TO THE ZONING CODE TO PERMIT MOVIE THEATERS TO SERVE ALCOHOL WITH A SPECIAL USE PERMIT.

Mr. Silverman: Moving into Item 2 on our agenda. Review of an amendment to the Zoning Code to permit movie theaters to serve alcohol with special use permits. Now what we're doing tonight, we aren't approving a permit for the use of alcohol. We are talking about a process that leads to a permitting and a review by Council of selling alcohol in theaters.

Michael, if you'd like to begin.

[Secretary's note: Mr. Fortner referred to the Planning and Development Department report, which reads as follows:]

The City of Newark Planning and Development Department has been working with Atlantic Realty Company (ARC) for the continuation of a movie theater use in the Newark Shopping Center since the center's revitalization project was first submitted in 2012. ARC recently signed a lease with Main Street Movies 5 (MSM5), the principals of which also own and operate Westown Movies in Middletown, DE, to replace the now-defunct Cinema Center 3. While the Department has not yet seen the final site plan to accommodate the lease, we understand MSM5 proposes to open a five-screen, state-of-the-art movie theater in nearly the same footprint as the Cinema Center 3 space. MSM5 proposes recliner seats and reserved seats ticket sales for first run movies, as well as limited alcoholic beverage sales. Currently, the City of Newark Zoning Code does not allow movie theaters to sell alcoholic beverages within city limits, although the Delaware State legislature recently passed a law permitting alcohol sales in theaters. The Planning and Development Department was asked by MSM5 to consider amending the Zoning Code to allow "indoor theaters" to sell alcoholic beverages. Their rationale speaks to the evolution of the movie industry over the last decade, not only in terms of film format and technology advancements for visual and scenery effects, but also advanced and expanded amenities and services in order to create a more inclusive and social entertainment experience. Therefore, the Department asserts the requested alcohol sales may be appropriate as a conditional use (requiring a Special Use Permit granted by Council) in the BB (Central Business District) and BC (General Business) commercial zoning districts.

The department's report on the proposal may be found below:

Background

In 2014, the Delaware General Assembly passed House Bill No. 299, which permits movie theaters to sell beer, wine, and distilled beverages under certain conditions and subject to a subsequent Delaware Alcoholic Beverage Control Commission Order (1407 A Rule pertaining to movie theaters), which cites requirements for sale. The resultant prerequisites are that a movie theater must have at least 500 seats, be open a minimum of 5 days per week, and show at least 250 movies per year. In addition, alcoholic beverages must also be sold at a separate bar area away from the other concession stand items by servers who have successfully completed an approved course on the responsible service of alcoholic beverages. Patrons purchasing alcoholic beverages must be at least 21 years of age and are limited to the purchase of one alcoholic beverage at a time and a maximum of two (2) alcoholic drinks for the duration of the movie. Further, patrons purchasing alcoholic beverages must be identified by a wrist band or similar means, and alcoholic beverages must be dispensed in a container that is clearly different from other non-alcoholic drinks. Finally, to ensure persons under the age of twenty-one (21) are not consuming alcohol, video camera surveillance of the inside of each movie auditorium that allows supervision of movie patrons from a centralized or remote location during each movie showing and the physical inspection of each theater at least once during each movie showing are also required.

Zoning

As previously noted, the current Newark Zoning Code does not permit the sale of alcoholic beverages in theaters. The Zoning Code is written so that uses are divided into two categories: permitted uses and conditional uses. A permitted use is allowed by right, and a conditional use is permitted with a Council granted special use permit. In order to provide City Council with the ability to monitor and control alcohol sales in Newark, alcohol sales in restaurants are conditional uses, and therefore, governed by a special use permit. The Department suggests that should Council wish to allow alcohol sales in indoor theaters, the use should also be a conditional one, requiring a special use permit and therefore, subject to revocation, if necessary.

Regarding the special use permit process, Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit providing the applicant demonstrates the proposed use will not:

- “A. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;
- B. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and
- C. Be in conflict with the purposes of the Comprehensive Development Plan of the City.”

In addition to Council’s consideration of the review criteria noted above, Zoning Code Section 32-56.4(f) also requires that Council consider Police Department and Code Enforcement Division reports regarding the business, along with any available information from the Delaware Alcoholic Beverage Control Commission.

Source Materials

To prepare this report, the Planning & Development Department consulted the following:

1. House Bill No. 299 amending the Delaware Code relating to alcoholic liquors and movie theaters.
2. Office of the Alcoholic Beverage Control Commissioner 1407 A Rule Pertaining to Movie Theaters.
3. Middletown Transcript; Dolores M. Bernal; February 23, 2015.
4. Movies and Mixology: Alcohol at the Cinema brings licensing challenges, Film Journal International, Rover Lewis, October 18, 2013
5. Is Alcohol Coming to a Theater Near You? CADCA Building Drug-Free Communities, Erica Leahy, May 5, 2015.
6. Louisiana Senate Bill 654 authorizing the issuance of certain alcoholic beverage permits to commercial film theaters, July 1, 2014.
7. Staff report, City of Santa Monica, CA on the on-site consumption of beer, wine, and distilled spirits in an existing theater, November 18, 2015.
8. Staff report, City of Norwalk, CA, request to amend the Norwalk Municipal Code to establish regulations and allow the sale of alcohol for on-site consumption at a movie theater.
9. Zoning Codes for the City of Wilmington, DE and Middletown, DE.

Methodology

To permit the sale of alcoholic beverages in indoor theaters, the Department suggests adding indoor theaters with alcoholic beverages to the list of conditional uses to commercial zoning districts BB ((central business district) and BC (general business), and adding indoor theaters to the special use permit section of Section 32-56.4 which governs facilities selling alcohol as follows:

In BB (Central Business District)

Add to Section 32-18(b):

“(15) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

In BC (General Business)

Add to Section 32-19(b):

“(19) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

Newark Zoning Code Section 32-56.4(f) to be amended as follows: (insertion shown in underline.)

“(f) Special use permits for restaurants and indoor theaters selling alcoholic beverages for public consumption on the premises:

(1) *Procedures:* All facilities selling alcoholic beverages for public consumption on the premises, proposed after the adoption of this ordinance, that require council approved special use permits for such sales, shall be subject to the following:

(A) Special use permits as required herein shall be reviewed as provided in Article XX, [Section 32-78](#), of this chapter.

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, [Section 32-78](#), of this chapter.

(2) *Review criteria:* In reviewing whether the applicant has demonstrated compliance with the factors for granting a special use permit specified in Article XX, [Section 32-78](#) of this chapter, city council shall consider a written report prepared by the planning director, at the direction of the city manager, which shall include the following:

(A) A police department evaluation concerning compliance with Chapter 19, Minors; [Chapter 22](#), Police Offenses, Article XVII, Sales and Distribution of Alcoholic Beverages; and, Chapter 32, Zoning.

(B) A building department evaluation concerning compliance with Chapter 32, Zoning, and [Chapter 7](#), Building.

(C) Any available information from the Delaware Alcoholic Beverage Control Commission; and,

(D) Other information as appropriate

Departmental Comments

1. The Newark Police Department contacted the Middletown Police Department, which has a movie theater that serves alcohol in its jurisdiction. The Middletown Police Department reports no incidents related to the serving of alcohol at the theater. Therefore, the Newark Police Department has no objection to changing the Newark Zoning Code to permit the sale of no more than two alcoholic beverages per movie showing to patrons who are at least twenty-one (21) years of age, as regulated by the Alcoholic Beverage Control Commissioner 1407 A Rule Pertaining to Movie Theaters.
2. The Planning and Development Department notes movie theaters in Delaware that sell alcoholic beverages as per the new State law include Middletown (Westown Movies) and Wilmington (Penn Cinema Riverfront).
3. The Planning and Development Department notes the special use permit process will enable the City to closely evaluate the appropriateness of the uses of this type on a case-by-case basis. In addition, in cases where there are significant issues, Section 32-56.4(f)(B) states special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of Council.

4. The Department believes the requirements set forth in House Bill No. 299 and Delaware Alcoholic Beverage Control Commission Order 1407 A Rule pertaining to movie theaters, combined with the special use permit revocation option as described above, should adequately address the concern for adverse impact.
5. The other City operating departments consulted included the City Manager's Office, Code Enforcement, and the City Solicitor. There were no concerns with amending the Zoning Code to allow "indoor theaters" to sell alcoholic beverages as a conditional use (special use permit granted by Council) in the BB (Central Business District) and BC (General Business) zoning districts.

Recommendation

In order to enable the City to regulate indoor theaters selling alcoholic beverages with a Council granted special use permit, the Planning and Development Department suggest the Planning Commission consider **recommending to City Council the following changes to the Zoning Code**:

In BB (Central Business District)

Add to Section 32-18(b):

"(15) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code."

In BC (General Business)

Add to Section 32-19(b):

"(19) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code."

Newark Zoning Code Section 32-56.4(f) to be amended as follows:
(Insertion shown in underline.)

"(f) Special use permits for restaurants and indoor theaters selling alcoholic beverages for public consumption on the premises:"

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, [Section 32-78](#), of this chapter.

Mr. Michael Fortner: Okay. Before you is a proposed amendment to the Zoning Code that would permit indoor theaters in the BB and BC zoning district to be able to seek a special use permit from City Council to sell alcoholic beverages for consumption on-site. If this Zoning Code amendment is adopted, Council would be able to apply the same standard used for considering whether or not a restaurant should have a special use permit to indoor theaters.

One thing that is fairly unique about Newark is the way we regulate alcohol. What we regulate is detailed in Section 32-56.4. In most jurisdictions they do not specifically regulate alcohol. They leave those regulations to the ABC, the Alcoholic Beverage Control Commission. So, for example in Newark, if you're a restaurant, you're able to open up and have a restaurant. But if you want to have alcohol, you apply to the ABC, but you first have to seek a special use

permit and get it granted from Council in order for the ABC to grant you that license. In many jurisdictions, including Wilmington and Middletown, for example, if you open a restaurant you do not have to go to the local government. You go directly to the ABC and you complete their process for alcohol. So Newark is unique, in that way, that we regulate alcohol.

Our uses are listed in our Zoning Code. And so we have in permitted use, restaurants in BC and BB, and then in conditional uses, we have restaurants with alcohol. We're proposing something similar with indoor theaters. Indoor theaters are permitted in a BB and BC zoning district with a special use permit. So an indoor theater has to get a special use permit anyway. If an existing theater or a future theater would like to have alcohol, this proposal would allow Council to consider it, by listing it in the Zoning Code. It would allow Council to consider it and they would review it. And if it meets the criteria for a special use permit, they could grant it. If they felt it was going to be detrimental in some way, then they could refuse it, just like they could a restaurant.

So the change to the Zoning Code is very simple. We list it in sections under BC and BB, and we add a line for indoor theater with the sale of alcohol for consumption on premises. It's the exact same way we do for restaurants with alcohol. Restaurants, by the way, are the only thing we permit to sell alcohol for consumption on premises. The ABC allows all kinds of things including stadiums and things. If we ever got a minor league baseball stadium, we would have to change the ordinance again to allow them to sell alcohol. We only allow restaurants to do this. We list restaurants with alcohol and since we don't have a listing for indoor theater with alcohol, we have to change the Code for anything else that comes up. So it's the same thing. In the regulations in 32-56.4, section (f), where it says restaurant, we add in indoor theater. So those are the changes. So Council would regulate indoor theaters selling alcohol the same way they would regulate restaurants.

In addition, with a special use permit, if it's not working out, they can pull it. They grant special use permits but then if it's not working out or there are issues, they can pull that special use permit and that establishment would not be able to sell alcohol anymore.

That concludes the summary of the department's report. I can answer any questions about it or take comments from the public.

Mr. Jeremy Firestone: Is there a definition of the word theater?

Mr. Fortner: Indoor theater?

Mr. Firestone: Indoor theater.

Mr. Fortner: I don't think that there is. Maureen will look, but indoor theater would include movie theaters but also any type of indoor theater like a playhouse.

Mr. Silverman: So live shows also? Live performances?

Mr. Fortner: Yes.

Ms. Maureen Feeney Roser: There is no definition of theater in the Zoning Code.

Mr. Fortner: So we would go by the Webster's Dictionary definition on that, whatever that is.

Mr. Firestone: Do you think it would be advisable for us to have a definition for theater?

Ms. Feeney Roser: I think we all know what we're talking about. If it would make the Commission feel more comfortable, we can certainly come up with something.

Mr. Fortner: Or we could use the dictionary definition of theater.

Mr. Silverman: How would you nail down the business model? There are multiplex theaters. There is live theater. There is multiple use where it is live stage and movie. And there are movie houses.

Mr. Fortner: We can go with movie theater. We could change it to movie theater and that would limit it only to movie theaters. But we have something called indoor theater and that's what we call movies. We've had that in the Code for years. It says indoor theater and that creates the whole gamut of theaters.

Mr. Firestone: So we've had a longstanding use of the word indoor theater?

Mr. Fortner: Yeah, we don't have something called movie theaters permitted. It's just called indoor theaters.

Mr. Firestone: Okay. If it's something we've been using for a while, then it's not as problematic.

Mr. Edgar Johnson: Mike, not wishing to complicate things, but the University of Delaware sells alcohol at its place. The University of Delaware sells alcohol at its football games. How are they permitted to do that?

Ms. Feeney Roser: They're exempt.

Mr. Fortner: I think we didn't start regulating it in our Zoning Code until about 1980 or so, and they're exempt.

Ms. Feeney Roser: The University is exempt. They're exempt from the Zoning Code.

Mr. Fortner: They're exempt from our Zoning Code.

Mr. Johnson: Okay. I like being exempt, to tell you the truth.

Mr. Fortner: If the University does apply even for a minor league basketball team, I guess it wouldn't apply because they're on their own facility. But if we did get a baseball facility that was separate from the University and they wanted to sell alcohol, we'd have to change the Zoning Code again.

Mr. Johnson: Are we aware of any problems that a theater that has sold alcohol has had because of selling alcohol? There used to be a theater over at Chestnut Run, over by ShopRite on Christiana Parkway. It sold alcohol. It sold food. So my wife and I could go and get a meal there. My wife drinks but I don't. So she could get a glass of wine and we could sit there at a table, actually, and watch a movie. We had done that, when it was open, maybe a half dozen times at most. But I never saw a problem with it. Are we aware of any problems with theaters that serve alcohol?

Mr. Fortner: No, we're not. The Police did look into it and reported no problems with Middletown and Wilmington. There have been no reported problems. And other states allow alcohol to be sold in movie theaters and in our research we didn't find any problems.

Mr. Johnson: Okay.

Mr. Silverman: Based on the report provided, the full background report provided by the Department, the methods of controlling imbibing are fairly restrictive in this proposal, aren't they?

Mr. Fortner: That's correct. Our Code follows Delaware law which limits you to two drinks. You get an armband. They're monitoring with ushers. But also these theaters contain cameras inside of them that they use to count the heads and they can monitor any disturbance. Plus, you're paying \$14 to see a movie so you don't want to be drunk.

Mr. Johnson: Not if you're a senior citizen, you don't.

Mr. McIntosh: \$12.50.

Mr. Silverman: Plus it's an event where there is an expectation that when the movie is over, you vacate the premises. This isn't a place you stay until closing.

Ms. Feeney Roser: One of the other conditions for this State law is that the containers have to be considerably different so it doesn't look like a soda.

Mr. Fortner: Yes, there is a list in your report that includes details on how they do it. That's the way they do it in Middletown and how they do it in Wilmington. So it's the standard across the State and we would just conform to that.

Mr. Robert Stozek: In the example that was given earlier with the University and it was during intermission that they sell drinks, but the patrons are not allowed to take the drinks back to the seats, is my understanding.

Mr. Johnson: That's not necessarily true. They might not be allowed to do it but I see it all the time.

Mr. Fortner: Is that right? You can buy it there but you can't go to your seat and watch the game?

Ms. Feeney Roser: That's at the stadium.

Mr. Stozek: No, I'm talking about at the theater.

Mr. Will Hurd: No, the at the University theater.

Mr. Fortner: Oh, the theater. I don't know.

Mr. Stozek: I understand the alcohol is going to be sold at a separate stand in the lobby. Are the patrons going to be allowed to take the drinks back into the theater with them?

Mr. Fortner: Yes.

Ms. Feeney Roser: Yes.

Mr. Stozek: What is the definition of alcoholic beverage?

Ms. Feeney Roser: The State law says beer, wine and distilled beverages.

Mr. Fortner: Yes.

Ms. Feeney Roser: So it's beer, wine and distilled...

Mr. McIntosh: Whiskey, pretty much.

Mr. Firestone: Was there any thought of limiting it to beer and wine?

Mr. Fortner: No, we wanted to make this as simple as possible in terms of, according to the State. The State has some pretty strict guidelines on it. So they do want to do mixed drinks. I don't think people are doing shots but I think they'd like a margarita or something like that.

Mr. Silverman: I would think if there is a question on whether this should be beer and wine versus spirits, that would be controlled by the liquor commission and the kind of application that was made and the application that was granted. I don't think we can really control it here. This is simply the use, yes or no.

Mr. Firestone: I'm thinking the zoning ordinance could be written however we want.

Ms. Feeney Roser: You have to remember that what you're doing is allowing an entity to go and request a special use permit upon which Council could impose reasonable restrictions on what they would like to see happen there. So it doesn't necessarily have to be done in the zoning ordinance. It can be done at the Council table because a special use permit is discretionary.

Mr. Fortner: That's an excellent point. And all we're doing is permitting Council to consider an application and Council impose limitations. And they do.

Mr. Stozek: In the material that you handed out, under Source Materials, there are seven, eight or nine various documents there. Could you talk a little bit about what was contained in those documents? Not so much the House Bill but what about the Film Journal International's Movies and Mixology and Is Alcohol Coming to a Theater Near You? Some of these others. What kind of comments were in there relative to selling alcohol in a theater?

Mr. Fortner: Maureen might want to comment on this, but there were lots of news articles about theaters opening up and how the business is transforming. Basically, movies theaters are trying to make sure they're getting more people in the seats and making it more of an entertaining experience. They're competing against staying at home and watching the TV. They're looking for ways not just to sell popcorn and sodas, but are broadening their menus and having more comfortable seats to make this more of an experience. And they think alcohol is an enhancement for some people. And there is a lot of information about this trend in movie theaters that's happening statewide. And so that's what a lot of this is about, the trend. It documents the trend. I had discussions with planners in Wilmington and Middletown and we talked about what they did and actually what they didn't do. They didn't do anything. They weren't necessarily involved in the process. They supported the process but they don't go to them and ask if it was alright because they didn't need to do that. The movie theater was permitted, it was approved and then they [inaudible] approval.

Mr. Stozek: Somebody mentioned there are going to be cameras in the theaters, presumably to make sure underage drinking doesn't happen or whatever they're going to be looking for. There is a theater up on 202 across the Pennsylvania line, an AMC theater. It's a little bit different. They serve food and drink. I have been to that theater on three occasions and I will tell you that one thing I noticed with people that are having drinks, and I have no idea whether they had a two drink minimum or what the rules are there, but probably after about half the movie goes through, the people that are drinking start talking. And basically they're interrupting the other people trying to watch the movie. Again, this goes back to how it is going to be policed to make sure that people are not being disruptive. Just talking in the theater is irritating, let alone talking on your cell phone.

Mr. Silverman: Bob, to your point, I believe the operator of the Middletown movie theater is here and perhaps he can describe how he controls his theater. Sir, if you would come to the mike and state your name clearly, please.

Mr. Arthur Helmick: Arthur Helmick.

Mr. Silverman: And you represent?

Mr. Helmick: And I represent Main Street Movies 5.

Mr. Silverman: Okay. Thank you.

Mr. Helmick: I am the owner of the Westtown Movies in Middletown and I am the owner of this one. And what you described is a dine-in theater which is totally different and it's not regulated in the style we're talking about here. This is more of an accommodation type of thing. Here in Newark we want to enhance the experience for the consumer so that the restaurants and the other food entities in the area, the Newark Shopping Center and surrounding, will benefit from this. It's not for them to come in and dine. You know, sit there for two-and-a-half hours and eat and drink. As you said, you drank before. This is just about adding to the menu for making people

happy with their experience. Some people are not soda drinkers or beer drinkers. And the same with the wine. And it is a two drink limit. We put a wristband on them. They wear the wristband. And like you said, the cups are identifiable. And only the people who bought the drinks can carry them, deal with them, and take them to their seat. We have cameras that are low-light level cameras that are in the front of the auditorium so we're filming through the whole place by itself. If there is someone that buys it and they're sitting next to someone that is 20 years old and a 22-year-old purchased it, could they just take a drink? You know, the same could be said sitting at the bowling alley. There are drinks there. You police them and know that they're 20 or 22. And at Applebee's when you sit in a booth and drink. So those are the kind of things that if people are going to break the law, we know you can cut the wristband off. They can smuggle liquor in themselves. There are lots of things they can do but the idea here is that we do have these cameras. You'll see monitors up so people can tell they're being filmed. We also have the actual foot ushers that will enter the auditorium to check and look inside. All the cameras are brought back to a central location in the office where they will be monitored. So this is not a place that you come and drink. If you were to walk in and you look like you'd already had too much, we know we're in a college town, so we're going to be really sensitive to that. Again, we're putting the recliner seats in. We're not a dine-in but we will have a little larger amount of food than the general, you know, old cinema where you could just get the popcorn, candy and soda. So this is just adding items.

You know, ARC, they've been very strict on us, also, to support the other tenants that they have and for us not to abuse them by trying to sell everything that they sell and take away their business. And that wasn't our intention. It's our intention to be a good neighbor and to also work in conjunction with the town. If there are issues, I can tell you that our business will be injured far faster than all of you will have to come saying we've got to do something with this.

We're running first-run films. We can only run those if we're doing a good job. Film companies monitor us. They have, you know, we call them spies. We kind of joke but they actually still do that. They bring in people that are hired just to come in, buy a ticket, go in the movie theater and they sit there to make sure you're not doing things like turning in that two people came to Star Wars and they walk in and they didn't get a seat. So the fear is that somebody is cheating. They still watch us. So we're monitored by that as well.

And then we have a fiduciary duty to the landlord and to the people who frequent the theater. This is going to be the type of theater where it's going to be all reserved seating. I don't like the word VIP necessarily because it's for anyone. But we're going to try to make this so that all the seats are great seats. You'll be able to sit with all the vision and everything. We're doing as much as we can to have the seats fit center to the screen for the visual of this thing. There's a whole physics lesson you could take here on how they have to actually throw the screen, to how many lumens of light have to stay on it, and all these things. That's what we're going to try to do here. Because the experience is diminished in Newark from the old style theater that was there. We're going to try to bring it up to 2016 standards.

Mr. Stozek: What do you mean by all reserved seating?

Mr. Helmick: What'll happen is it will be just like if you go to a ball game and you have a seat. So you go up to row B, seat 7. That's the way your ticket will read. So when you walk in, you'll sit down in your seat. It will be reserved. You can buy it ahead of time or you can just walk there with the hopes that there will still be seats available. But you will know. That's the beauty of this. You'll be able to go online, pull up the website, take a look at that and actually go to the auditorium you'll be in and see how many seats are left. If you want to not purchase online, you can see if it's 80% sold or 90% sold out, so you'll know that you probably have very little chance of getting a seat if you wait until you get there. Whereas if you purchase online or ahead of time, you reserve that seat. And when you walk in the theater, the mad rush to rush in and get in front of somebody and be all lined up, will not be there. We're trying to make this, again, kind of a VIP feel so that you come in and you know you have your seat. There's no urgency to rush through the popcorn line. When you go inside, you sit down. Your seat will be there for you. And we'll have ushers there to take care of it if there are mix-ups and things like that. And if

you buy the wrong seat and there are others available, you can change it back in. You can do all of those things, as well.

Mr. Stozek: You mentioned there would be foot patrols or whatever. How often during the showing of the film would they be there?

Mr. Helmick: They go into a film two times at a minimum unless there is an issue. Generally, in this type of an atmosphere, from our research and what we've watched, this has created a place where people really want to see the film. It's very comfortable. The sound is going to be extra special compared with a lot of films. The lumens of light. It's going to be a great place to watch a movie. As you said, going in there, this is not the type of dine-in. There's a place called the Alamo Drafthouse. They're basically a restaurant with, instead of having bowling alleys as a little sideline, or a jungle gym or something, their deal is to have a half dozen screens of movies. Well when you go into those, they're kind of a disruptive operation. They're not as much there to see the movie, as they are to socialize.

Mr. Silverman: So it's a carnival atmosphere.

Mr. Helmick: More of a carnival atmosphere. If you really want to watch these movies, and are serious about it, you'll find that it will be quiet. It won't be like now where people can move around, jump around. They do what they want in the theater. These are assigned seats and we'll be watching on the cameras. We do that now in Middletown. If we have issues, we go right in. We're the top rated movie theater in the entire State already and we're the only ones that carry a five star rating on Google, just because of the way we've made the theater operate and the way that we try to make it an experience. Like you said, you're paying a lot of money to watch a film and when you do that, and some films, they're the types of films that you really get into them. They're long and complex. And when you sit down and watch these, you can't be distracted by everything going on in the place or you'll lose your place in the film and you've just spent your \$12 or \$14 or whatever, wherever you have to go to spend it. You've lost it.

Mr. Stozek: If this comes before Council, and Council wanted to restrict it to just beer and wine, would that work for you?

Mr. Helmick: Well, you know, would it work for me? I try to look at these things just like I tried to build the theater. I don't try to look at what works for me. Of course I have to be able to make money and that's what we are in business for. And I have to pay my rent or these gentlemen here would kick me out. So the idea would be that, why do I do this? I look at it from the consumer standpoint. So I'm trying to provide them with items that satisfy them to want to go to the movies. We're because we're in a competitive world today of everything else. When you go out for a Friday night, I think what happens... is it okay for me to move this?

Ms. Feeney Roser: Yes.

Mr. Silverman: Sure.

Mr. Helmick: Thank you. What has happened in the movie theater business in the past is that everyone that had to see the movie went there. But it became such a bad experience from the sound wasn't good and the screens weren't necessarily as good as they could have made them. And the whole experience turned into, unless I have to see Star Wars, I'll wait for it to come to my television. We're trying to create that when you go to Newark and you want to do something for a night out, that you have options. You have options that you go to dinner and a movie. Everybody has heard that term, dinner and a movie. Well we want them to frequent Main Street. I've been coming to Main Street since I was here at school in the 70s and it's the same thing. Main Street is where everybody goes and does this. So then afterwards, what else do you do? Well, this movie theater will provide that 'after'. So this is the idea. So we talked about do they have to have beer and wine? Well movies theaters have been around a long time with no beer, wine or spirits or anything like that. So it's not like they have to have anything. The point would be that we are trying to make this a great experience for whomever wants to use it. A two drink minimum is not something that anyone even by the...

Mr. Silverman: Two drink maximum.

Mr. Helmick: Two drink maximum. I'm thinking of charging them before they get in, so that's my thought. The two drink maximum, when they do that, no one, in two-and-a-half hours, generally, is inebriated from that type. And I have to tell you, most of them drink one. Most people just like to have one drink. And others, the ladies really love this Copa wine that's come out. Have you seen that? The guy was on Shark Tank. It's a really neat invention called Copa. They bottle it already in glasses, these seven ounce glasses, and they have a lockable lid on them. You just peel or pop the lid off like you would a can but it takes off the whole top. And they walk right in and, you know, with Fifty Shades of Gray last February we couldn't hardly carry enough of them in there. It was all the ladies. I could tell you, they enjoyed it.

So that's really what it's about. It's about accommodating the consumer and trying to make people look at us. It'd be like us saying, do you have to have Goobers or Raisinets? You could get by. And some of the chains go to the cheaper stuff like Red Vines instead of Twizzlers. But we won't do that here. We're going to bring better stuff, you know. So, I'm not offending the Red Vines in your bag, I'm just telling you the better quality is the stuff that we'll serve. There are four grades of Orville Redenbacher popcorn. Four different grades. We'll only serve the best grade. It's just another thing about having the best stuff. And it won't change the price, they're not a big difference.

Mr. Firestone: One question. Everything mostly sounds great. And I like movies and I think having a movie theater in town is great. It's very nice. But I go to the movie to watch the film, not to be filmed. And so I have a question about this camera. You know, if I'm a patron and [inaudible], why am I getting filmed? You know, when I go to most theaters, when I go to most places, I'm not getting filmed. When I go to Applebee's, I'm not getting filmed. When I go to the bowling alley, I'm not getting filmed.

Mr. Silverman: Are you sure of that?

Mr. Bob Cronin: Yeah, there are security cameras all over the place.

Mr. Silverman: There are security cameras all over.

Mr. Johnson: You're being filmed right now, Jeremy.

Mr. Firestone: But this sounds like its showing on everyone, all the time, 24/7. So it sounds a little more intrusive than some of the other camera operations.

Mr. Helmick: The cameras here are in every auditorium and they do face from the screen to the crowd. So you are being filmed and so is everyone else in there. The world that we live in today is going in that direction. What brought this about a little bit more, for us especially, was can you prevent a problem? Can you always prevent one or are you always the person that's like the fireman and fire prevention? You know, everybody would love to prevent the fire but, if not, you're having to put it out afterwards. So going to the Colorado shooting in the movie theater, that shooter came into the theater and there are cameras out around there that they saw [inaudible] come through, but not inside. And he goes in the theater and goes to the back. He opens the door right there, props something in the door, goes out to his car and brings it in his hands. Now would having him on film change that? Well, if he got away, you would have a way of tracing that and finding him. But beyond that, had that door been on the security system like our doors will be, and are, when they prop that door open it will set an alarm off in the auditorium. So those are things, just safety factors, we try to do, like alarms to doors and filming. It's just to keep the presence of what's going on and makes it so you can monitor what takes place. We don't keep the films for anything other than just what the police would need or what they have used. When you're in a public place in this day and age, you have to expect to get filmed. That's just the way I look at it.

Mr. Johnson: Jeremy doesn't want to show up on YouTube.

Ms. Feeney Roser: If I might just add to that. The requirement for video cameras is part of the State law. So we could make our law more restrictive, which we are proposing by adding the special use permit requirement, but we couldn't make it less restrictive.

Mr. Johnson: I have a question. How many screens will you have, or theaters, or auditoriums?

Mr. Helmick: Five.

Mr. Johnson: Five. Thank you.

Mr. Firestone: What percentage of your revenues comes from alcohol?

Mr. McIntosh: What's the senior citizen's discount?

Mr. Firestone: What percentage of your revenues comes from alcohol?

Mr. Helmick: Generally the alcohol sales revenue, the way they work is it goes by cap. They call it a cap. So if you had 1,000 people, they figure how many per person. So if you were take how many people [inaudible], it's generally, on alcohol, it's only about 40 cents per person. So everyone in the theater would be 40 cents. So if we took that back, it's a limited amount. But if you take each item there, you know, popcorn and soda is the highest number. But everything else kind of adds in that way. A little of this, a little of that. There's no one big item other than popcorn and soda. That's still the biggest item.

Mr. Firestone: How much are they?

Mr. Helmick: How much are the sodas?

Mr. Firestone: Yes, compared to the 40 cents for the...

Mr. Helmick: The sodas are in the \$5 area and the liquor is in a similar area. They're a very similar price. I want to say the price is \$4.75.

Ms. Feeney Roser: Art, I think what Commissioner Firestone is asking is what's the percentage of the total income that comes from alcohol sales, either on a nightly basis or per movie? That's what you're trying to get to, right?

Mr. Firestone: Yes.

Mr. Helmick: Oh, okay. So our cap, I go by, I don't have that exactly, but I know our caps are like \$5.40, and 40 cents of that would be the alcohol. So it would be less than 10%. Fifty-four cents would be 10%. So it's less than 10%. And it's a higher ticket item too.

Mr. Silverman: Frank, you had a question?

Mr. McIntosh: Yes. What's the senior citizen discount?

Mr. Helmick: That's a good question. So I'm not exactly sure.

Mr. McIntosh: Sure, you come before us and you don't know that.

Mr. Helmick: I don't.

Mr. Silverman: Commissioner Cronin, do you have any comments?

Mr. Cronin: I have a couple of questions. Your five screens, what is the seating capacity of each particular screening room or movie room?

Mr. Helmick: The largest screen, which when you walk in is the big single on the right, will have 200 seats. And the other four will be a balance of whatever, to make it 450, I believe.

Ms. Feeney Roser: I believe the State requirement is 500. So you'll be able to add additional chairs, if you need to?

Mr. Helmick: Well the State requirement, it says seats on here but that's not really the State requirement. The State requirement is 500 people because the way it was made is for lobby and seating. So your lobby can hold 50 people.

Mr. Cronin: Well what we're reading says 500 seats for a theater.

Mr. Helmick: It does but I don't think...

Mr. Cronin: And I guess part of my question is when you have five screens, is that considered one theater or five theaters under one roof?

Mr. Helmick: The theater is considered the entire building and the screens would be considered auditoriums. So it's five auditoriums and one theater. So the 500 has to go for the theater.

Mr. Cronin: Okay. The next question I have, presumably if patrons show up that have been to happy hour, had a nice dinner and are already loose and happy, your servers have the ability and resolve to decline the two drinks per person?

Mr. Helmick: We will decline anyone that seems out of sorts, whether we knew they were on drinks or any other substance. Again, it's there to serve the greater mass of people. So you have to. We're not afraid to have to deal with people that are a problem because we have a lot of people. It's not like a small restaurant that has to worry about one person who comes and spends a lot of money at the bar. That's not going to happen here. Nobody can spend a lot of money anyway. It's only what they can spend at that one viewing.

Mr. Cronin: Thank you.

Mr. Silverman: Any other questions?

Mr. Firestone: I have one more. Let's say you have a 10:00 a.m. matinee. Do you serve alcohol at 10:00 a.m.?

Mr. Helmick: We do not.

Mr. Firestone: When do you begin to serve alcohol?

Mr. Helmick: We do not serve alcohol before [inaudible]. We've never had a request for it [inaudible]. Again, they're coming to see a movie. They really aren't coming to drink. The ones who come at 10:00 a.m. are not drinkers.

Mr. Johnson: They're the senior citizens looking for a discount.

Mr. Helmick: I can tell you when most of it is sold. It's sold on date night for married couples; where they have a babysitter and they get to go out. And their choices are, they like to have, one likes to have a wine and the other one has a drink or a beer. They come out, they watch the movie, and it's 7 o'clock or 9 o'clock. That's what it primarily is. Even on Saturday our liquor sales are very, very weak early. When you get a, what you might call, Fifty Shades of Gray movie, it sells a lot but it's still sold at 7 o'clock. We don't sell it early.

Mr. Silverman: Now I am going to open up the floor and I'd like to offer the next opportunity to another principal who is involved and that's the owners of the shopping center, if they have anything to add.

Mr. David Ross: Thank you, members of the Commission. My name is David Ross. I am the president and partner of Atlantic Realty Companies and we are the owners of the shopping center. And Adam Schulman is here and Mark Arena. Mark is in charge of operations. So, one of the things that we had on our agenda in our plan to redevelop the center was to keep the very

important amenities, and that amenity, we recognized, could be the theater. We lost the bowling center due to necessity of investing some \$10 million in capital on the project. And so the amenity we fought hard to try to attract and to operate was the theater. The existing theater was defunct by nature. They refused to put capital into the facility. The equipment, just everything, was completely outdated. So we worked hard on attracting a theater and we were very fortunate to find Art. And, not only that, the fact that he runs the most successful theater was recognized by many in the City. And on top of that being such a close part of the [inaudible].

I hope that you have been, I'm sure all of you have been, out to the center. We've tried very hard to make this center a big part of the community. We've adopted the banners that you use on Main Street to become part of our center. Those banners will change seasonally as yours change. We've brought in uses that are part of the fabric of the community like Newark Natural Foods and the farmer's market. We plan, this year, to sponsor and host the 2nd Annual Bicycle Day in Newark. And we hope to do many other things. So the community center is just that. It's a center that is embraced by the community and the employees of the center, and the community makes it successful. So we recognize that and hope to attract a lot of uses from within the community to finish this out. And we think this is just a fine use to round it out with Newark Natural Foods coming to the center. So thank you all very much for your support.

Mr. Silverman: Any questions? Okay. Is there anyone else who would like to speak? Please come forward and identify yourself.

Ms. Jean White: Jean White, 103 Radcliffe Drive. I come to oppose this application [inaudible].

[Secretary's note: Planning Commission Secretary approached the microphone to determine if it was working, and subsequently turned it back on for the speaker.]

Ms. White: Am I supposed to start over? I leave it up to them.

Mr. Firestone: I heard you.

Ms. Feeney Roser: I heard you.

Ms. White: Do you want me to start over?

Mr. McIntosh: No, you were doing good.

Ms. White: I can't tell when things are on. Thank you very much. At any rate, there are plenty of opportunities to have alcohol, for those who wish it in Newark, before one goes to a movie. There are restaurants. There are bars nearby. And even in the Newark Shopping Center there are places to go. Or a movie-goer can have drinks in their home or apartment ahead of time and after the movie. They can go to many of the places in Newark nearby to top off the evening with alcohol. But it does not seem important or necessary to have the alcohol during the movie. One goes to the movie to watch the movie. And I do not think that it impacts those who want to have alcohol to not be able to have it during this two or three hour time. There are the opportunities before and after which are actually wonderful and giving the opportunity to other businesses in our City of Newark, for people to be served by other of our businesses.

Now I would like to have you all consider the particular population in the City of Newark. We have some 15,000 undergraduate students as well as others. This particular opportunity, it does not seem to me, is useful for this population. We do have, as probably everybody here knows, a high incidence of binge drinking as well as too much drinking. As some of you may know, a few years ago the Robert Wood Johnson Foundation chose six universities across the nation that had severe binge drinking problems, and the University of Delaware was one that was chosen. There were committees that were set up at different levels. I was on the policy enforcement committee for 8-10 years. We met in the Police Department, with various people from the community, from the Police Department and from the University. And although knowing about that before, that was certainly an insight. Those committees ended before President Harker came in but the problem still exists. Binge drinking is a huge problem in the City. And too much drinking, if not to that point, is a huge problem, particularly with college

students. It does not seem, to me, beneficial for the City of Newark to allow drinking in the movie theaters, which is done in the dark. Some of it would be in the dark. And we're opening this very large building that is going to have, I believe, 220 apartments. And my understanding from the newspaper is that this is being geared particularly for students to have those apartments. Which is fine. But it does not seem that it's necessary to have movie theaters to be serving the alcohol.

As far as special use permits, first of all I notice that if there were a problem, it could be taken off only for one year, not permanently, if you allow alcohol with a special use permit. But secondly, for those of us who have followed special use permits with restaurants that had problems, restaurants and bars that had problems, it is actually very difficult to lift a special use permit. If there are problems, they have to be documented, this, that, and the other thing. And there are occasions in the past, the distant past, where there were efforts to take away a special use permit and, of course, the business also fought it tooth and nail.

It seems to me another thing has to do with, I think it would be very easy, in the dark of a movie theater, for someone who got the alcohol who was 21 or over, to pass it to someone next to them, a teenager or whatever, without this being noticed. So I may have missed a few things but those are my views and thank you very much. And I hope that everybody on here will consider the views very seriously.

Mr. Silverman: Thank you. Is there anyone else who'd like to speak?

Ms. Marilyn Minster: You probably know me. I'm Marilyn Minster and I've had Minster's Jewelers in the Newark Shopping Center for 60 years. I am probably your best barometer of whether or not the movie theater should be there and should have wine and dine, as I call it. The reason being, I have people coming into this store every day and asking, "Are we going to have a restaurant? Are they going to open next door?" Second question, "When is the movie theater going to open? Are they going to be like what they have in Middletown? It is going to be that they have the relaxing seats and the wine and the food that they have?" And I tell them yes I think that is in the works. And I have more than one person a day ask me. Most customers ask. They want it. This is the barometer of the citizens. I am speaking for them, because when they come in, they are delighted. And I must say, to have Atlantic Realty backing and monitoring the things that happen in this shopping center, we could not ask for anything better. They keep very good control of us and it is very welcomed. And you see what the center is now, after its decline. And they're going to re-do the movie theater, the façade, and there will be changes made. And it will be controlled. Thank you.

Mr. Silverman: Is there anyone else who would like to speak? Can we move to the question?

Mr. Firestone: I just have a question for the gentleman here from Middletown. Do you have any, sort of, non-drinking section in any of your theaters? Sort of analogous to those of us who are old enough to remember non-smoking sections in restaurants, which would address one of the points that was raised about not wanting someone to be drinking sitting right next to you.

Mr. Helmick: The short answer to that is no. The longer answer goes back to, again, that I try to think as if I am the customer and accommodate everyone. And so as an accommodation factor, if you came back and said there is someone sitting next to me drinking, could you move my seat, we would do everything in our power to do that. So I will tell you this, we had the Bill passed and it's been a year of this, and we haven't had a single person do that. And we put 315,000 people through the Westown Movies theater and have not had a single request for that to happen. You know, I hate to jinx myself for the fact that it's worked so well, but it really has. We're just there to accommodate. If you're there to drink, you're in the wrong place. This, again, would be like us saying that you can't have a soda. It's just not something where we couldn't serve candy or popcorn. We're just here to accommodate people.

We do a thing in Westown called the Middletown Treats, which is Pat's Pizza. We use them to have a pizza. We use the local people for some pretzels. We use the local ice cream from Brewster's. We try to do those things. It's what the customers like. And we also go to the other side and try to serve things that if you want nuts or you want seeds or sunflower, we try to

serve all those things. Because we're not such a huge chain, we can accommodate simple requests. We had people that asked for certain candy. We try to provide it. I mean it sounds hard to believe but we really do if we can do that. That's what, making it small, we're more flexible and we can move with the agility that the big chains cannot do. For instance, we run sensory type movies where you can come in and we can turn the lights up. Like we have an autistic movie down there and they turn the lights up and the sound down a little bit. And we have a babies and mommies type thing on a Saturday morning show. So things like that we can accommodate. It just makes it so we can try to make everyone happy. I know that's a long answer to say no, but that's...

Mr. Silverman: That's very informative.

Mr. Cronin: Mr. Chairman, one more thought I have. This seems to be like it's a well-managed, well-supervised operation, but I like to take a long-term view of things. At one point in time you'll sell the operation to another operator or another owner, and they might not have the same wisdom, skill set and commitment you do. So would it be wiser, perhaps, to structure this in the form of a license that either travels with one owner only or a license that's subject to renewal every two or three years? If things are going well, it gets renewed every two or three years. Something like that. Give some measured aspect to it. That it's not just by zoning, that everybody that operates the theater has the right to sell the alcohol there.

Ms. Feeney Roser: The State licenses are individual, are they not, Art?

Mr. Helmick: They are.

Ms. Feeney Roser: They are. So if you were to sell it to a different movie operator, they, too, would have to apply for a State license.

Mr. Helmick: That's correct. It wouldn't automatically transfer. But one thing I want to add is that Atlantic Realty was very diligent in the way that they structured the lease that any type of a sale has to be represented through them. So they have to vet the person. So I couldn't just sell it, just for the most profit, to the worst person. It has to go through their system. I couldn't sign that lease over tomorrow morning to you without their okay and them vetting who that person is. So there is some background. It's a thirty year lease and there is background to that. It has to go through them. So they're not going to allow me to just make a mess of their center.

Mr. Cronin: Thank you.

Mr. Stozek: Going to one of Jean's concerns, what is the criteria or process by which the special use permit could be revoked were there a problem?

Ms. Feeney Roser: I'm going to answer what happens now and then I'm going to talk a little bit about what is being proposed. Right now, either a request of the Mayor, the City Manager or a Councilperson whose district the restaurant or theater would be located in, can request that Council consider revocation of a particular special use permit. So, say there was an issue and someone went to their Councilperson. That Councilperson could bring it up and put it on an agenda and then we would have a Police Department and Planning Department report done about incidences or issues. Then the operator would be brought here to defend their special use permit and it's up to Council's discretion.

One of the things that the Police Department is thinking about doing and we've had preliminary discussions and, of course, they need to flush it out a little more, and we'll certainly talk to Council about it, is to create a points system for that. So that one point might give you a verbal warning. Two points might make you come in for a meeting. Three points, you would go to Council. That kind of thing. So there would be a more regulated way to do it. But at this point, and in Code, it simply says that Council can review anything at the request of the Mayor or members of Council, or the City Manager.

Mr. Silverman: Are we ready to move to the question?

Mr. Hurd: Sure.

Mr. Silverman: The Chair entertains a motion to recommend to the City Council the following changes to the Zoning Code:

In BB (Central Business District), add to Section 32-18(b):

“(15) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

In BC (General Business), add to Section 32-19(b):

“(19) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

Also, Newark Zoning Code Section 32-56.4(f) to be amended as follows:
(Insertion shown in underline.)

“(f) Special use permits for restaurants and indoor theaters selling alcoholic beverages for public consumption on the premises:”

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, [Section 32-78](#), of this chapter.

Mr. Silverman: That’s the proposed motion. Do I hear a motion?

Mr. Hurd: I so move.

Mr. Silverman: And do I hear a second?

Mr. McIntosh: Second.

Mr. Silverman: Is there any discussion on the motion? All those in favor, signify by saying Aye. All those opposed, signify by saying Nay. The motion carries.

MOTION BY HURD, SECONDED BY MCINTOSH, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL AMEND THE ZONING CODE IN THE FOLLOWING WAYS TO PERMIT THE SALE OF ALCOHOLIC BEVERAGES IN INDOOR THEATERS IN BB AND BC ZONING DISTRICTS WITH A SPECIAL USE PERMIT:

In BB (Central Business District)

Add to Section 32-18(b):

“(15) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

In BC (General Business)

Add to Section 32-19(b):

“(19) Indoor theaters, with alcoholic beverages, except as otherwise regulated in this chapter, and subject to the requirements in Section 32-56.4(f) and requirements of the Delaware Code.”

Delete Section 32-56.4(f)(B) which reads as follows:

“(f) Special use permits for restaurants selling alcoholic beverages for public consumption on the premises:”

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, [Section 32-78](#), of this chapter.

And replace it with new Section 32-56.4(f)(B) which reads as follows:

*“(f) Special use permits for restaurants **and indoor theaters** selling alcoholic beverages for public consumption on the premises:”*

(B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant **or indoor theater** is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, [Section 32-78](#), of this chapter.

VOTE: 7-0
AYE: CRONIN, FIRESTONE, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK
NAY: NONE
ABSENT: NONE
MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you very much.

3. DISCUSSION REGARDING PLANNING COMMISSION TRAINING SESSIONS.

Mr. Silverman: Moving on to the next item on our agenda, Item 3, discussion regarding Planning Commission training sessions.

Ms. Feeney Roser: Thank you, Chairman Silverman. Basically, of late, we have offered opportunity for Planning Commissioners and staff to have training, generally at IPA offered sessions. Commissioner Hurd has attended Planning 101 and provided for you a summary of it and the slide notes from it. I don't know whether Will will want to speak to whether or not it was a good experience for him.

Mr. Hurd: It was a great experience. I think it helped me get some insight into, sort of, what's the issues in the Comp Plan that don't always come up because we're usually talking about it from our view, up. You know, what we are trying to see for the City. And Mr. Walton, especially, was talking about the issues that come when you try to apply it or you try to work with it or within that framework, and how you have to consider the other pieces of the puzzle. It seems like, he's trying to make sure that you didn't think about just the Comp Plan and the Zoning Code and I'm done. It's like, no. Because you've got a State Code above it. You've got a State Constitution above it. You've got a Federal Code above it. You've got a Federal Constitution above it. It's a stacked thing and none of those can be in conflict with the one

above it. And as he said, he spends a lot of time litigating the holes between Comp Plans and State Code. So he knows where they are because he runs into it all the time. I don't think he's trying to work himself out of a job but I think he is trying to help us avoid obvious problems that he's seen before. I thought it was good and I'm going to try to get to the one in March which is about Land-Use and Development.

Ms. Feeney Roser: It's Land-Use and Development Administration, Planning 103.

Mr. Hurd: Yes. I missed the one in February because my kids were sick.

Ms. Feeney Roser: And the other training session that we have scheduled is the training session for Planning Commissioners which we had originally talked to Max and Roy Lopata about doing, but thought that it would be better if we also reached out to IPA to see if they had some suggestions for us. And they have agreed to create a pilot Planning Commissioner only training session that they would like to offer here first to see if, in fact, that will work out. So Ed O'Donnell, who is, I don't know exactly what his title is, but he's one of the IPA administrators, Max Walton and Roy Lopata are putting together a session that we'll do here in the Council Chamber on Wednesday the 13th of April. I apologize, I originally got confused by dates and put you down on a Tuesday and that made everybody just a little crazy. Particularly the trainers who blocked off the 13th for me. So I have corrected it and I'm looking forward to that session. Hopefully they'll be able to spin an IPA training course out of it for other commissioners in other communities.

Mr. Silverman: Now will this training be tailored just to the City of Newark, I hope, rather than a Commissioner 101.

Ms. Feeney Roser: There will be some aspects of Commissioner 101 covered, just to make sure everybody is on the same page but then it will drill down into the specifics of our Commission.

Mr. Silverman: Okay. Are there any other questions or discussion on our training?

4. REPORT ON PLANNING COMMISSION WORK PLAN PROGRESS.

Mr. Silverman: Moving to Agenda Item 4, report on the Planning Commission Work Plan progress.

Ms. Feeney Roser: Just to tell you how out of sync I am on scheduling and creating dates, I have created a quarterly report after two months. So I realize this is going to need to be updated.

Mr. Johnson: You need to go to a movie theater and have a drink.

Ms. Feeney Roser: Maybe I do.

Mr. McIntosh: Have two.

Ms. Feeney Roser: Or two. Basically this is sort of an update of where we are. Mike is here tonight and he has been to the PLUS review which was scheduled for Wednesday the 24th. That went very well, as I understand it. I don't know whether you want to speak to that or not, Mike. We're talking about where we are in the Comp Plan process, and how that went with them, because that had to happen before we could go to second reading and public hearing with Council.

Mr. Silverman: So that's the State review of our proposal.

Ms. Feeney Roser: Our Comp Plan.

Mr. Silverman: Our Comp Plan.

Mr. Fortner: Yes. And they reviewed it. It did go very well. They will be writing us a letter. It's just like a recommendation and it's very, just little nicety kind of things. They had no

problems with our Comp Plan and it passed right through. They would like us to add something on climate change and they might write us a little thing on that. It's optional to us whether we put it in. It will be optional for Council. They had a couple of things about they might not like us to use levels of service. We have some recommendations where we talk about levels of service. But these are completely optional things for us to consider, and we put them in there because that's the way we wanted them. So I suspect that a lot of that will stay the same.

Mr. Silverman: So the climate change is pretty much them checking off their list. Because, if I remember, the emphasis was on sea level rise. And at more than 100 feet above sea level for most of Newark, we weren't immediately concerned about that in the next five years.

Mr. Fortner: No, no, but they could give us some language and we could do an amendment to it if we chose to. We could always amend this plan.

Ms. Feeney Roser: And it's on for a second reading and public hearing on the 14th of March.

Mr. Fortner: That's correct.

Mr. Silverman: For City Council.

Ms. Feeney Roser: For City Council.

Mr. Fortner: That's correct. And then I would hope they'll approve it and then it will be official.

Mr. Silverman: Thank you.

Mr. Stozek: Is the 14th of March the same day that Trader's Alley is going to Council?

Ms. Feeney Roser: Yes, unfortunately.

Mr. Hurd: Oh boy.

Ms. Feeney Roser: It should be an interesting meeting.

Mr. Hurd: I'm staying home.

Mr. Johnson: Is that March 14th? Are you going to be here?

Ms. Feeney Roser: March 14th is a Monday.

Mr. Stozek: I was planning to be here.

Mr. Silverman: I have one question based on the proposal that was put out. It's not for you, Mike, it's just a general question. You mentioned moving forward, or the report mentioned moving forward, with a parking analysis and potentially hiring an intern to work with the City. Will we get to see a work program for that individual?

Ms. Feeney Roser: Yes, we have hired Kirstin, I don't remember her last name. She worked for us last summer as a graduate student intern. She's very, very capable. She starts work on Thursday.

Mr. Silverman: What's her background?

Mr. Hurd: Just stay up there, Mike. Why are you sitting down?

Mr. Fortner: Kirstin's background? She is a graduate student.

Mr. Silverman: In what field?

Mr. Fortner: Public administration. She worked with us as an intern this past summer. And she did a research project for the Institute of Public Administration about the Delaware Avenue cycle track where she was the one, she basically put a video camera on her helmet and rode around Delaware Avenue on a bicycle and mapped out some of the hazards and how a cycle track could address some of those things. That report was very influential with DelDOT.

Mr. Silverman: Personally, I am looking for some meat and potatoes to come out of this report that we can use. As I've expressed in other meetings, we need to really do an analysis of student parking involving residents. Anecdotally, I've been watching some of the buildings like Rittenhouse Station here and the cars that are in there. They just don't move during the week. They don't move during peak periods. There is an opinion generally held by the public that every student who is in residence in an off-campus rental property is contributing to the chaos of the daily commute and simply putting more cars on our City streets. Anecdotally, I don't think this is a fact. It's something I would like looked into. An inventory of the number of parking spaces we have associated with rental properties. An analysis of the number of cars that actually come with a rental. This shouldn't be hard to get because I would assume a good landlord would register an automobile along with an apartment. Do 100% of the students who rent here bring automobiles? Do 50%? We don't know. So we have no feel for the nuts and bolts impact to look at a new rental unit coming in. You figure if 220 apartment units was used with respect to the shopping center, and I'm sure there are multiple occupants in those apartment units, do we know whether every person there is going to come with an automobile? I'm looking for that kind of solid information. It might require some sampling. And I don't know if there is anyone else who has any ideas they'd like to contribute to that work program.

Mr. Stozek: I have a question. We were having a discussion before the meeting today about public transportation because I know that's in the works somewhere to be looked at. And the question came up about the University buses. Do we know whether the owners of the student apartments, do they pay the University to run those buses?

Ms. Feeney Roser: Some of them do. The Retreat does, to get all the way down to Suburban Plaza Shopping Center. Those that are on the regular route wouldn't. It's usually an extension to the route where they require it. I believe the ones up on Paper Mill Road may as well.

Mr. Stozek: Because the discussion we had was around, at least in certain areas, the buses were running all day long and there's hardly anybody on them. Ever since Rodney and Dickinson closed, there are never anybody on those buses. That comment was made about the apartments and those services.

Ms. Feeney Roser: Well what we could do, as I said, Kirstin is getting ready to start. And if I ever call her Kirstin, actually, instead of Kristin, I'll be good. But she can get started. We can have her map out her plan and get it on an agenda. We could bring her in here and have her talk to you about it and get your ideas about whether or not she is on the right track.

Mr. Silverman. Okay. Because I'm looking for the demographics of an off-campus rental vehicle owner.

Mr. Firestone: Do you have her last name?

Mr. Fortner: Jones.

Ms. Feeney Roser: Jones. Easy enough.

Mr. Firestone: Jones.

Mr. McIntosh: No one is named Jones anymore.

Mr. Firestone: Kristin Jones.

Ms. Feeney Roser: Kirstin.

Mr. Fortner: Kirstin Jones.

Ms. Feeney Roser: I'm just going to call her Jonesy.

Mr. Silverman: Now will she be contacting Rusty Lee at the University in the Engineering School? He's been recommended to me as a resource and I understand that he's been involved in community activities. And if we were to talk about changing parking standards, as I and others have discussed, perhaps the Engineering Department could come up with calculations and illustrations. Because I know with Trader's Alley we got into 70 degree parking versus this degree parking, and what kind of radius do you need for that. There are standards out there and it's been my observation that the City of Newark parking standards are pretty much suburban 1960s or 1970s full size automobile type standards. And there must be other opportunities and models throughout the country. Even a survey of those.

Any other comments from the Commissioners on the work program? I think that brings us to the end of our agenda.

Mr. Johnson: Motion to adjourn.

Mr. Silverman: Okay, I hear a motion to adjourn. Is there a second?

Mr. Hurd: Second.

Mr. Silverman: Okay if there is no objection, we stand adjourned.

Ms. Feeney Roser: Thank you.

There being no further business, the Planning Commission adjourned at 8:16 p.m.

Respectfully submitted,
Michelle Vispi
Planning Commission Secretary

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