

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

**MICROSOFT TEAMS
MEETING CONDUCTED IN PERSON**

**DECEMBER 3, 2024
7:00 P.M.**

Present at the 7:00 P.M. meeting:

Commissioners Present:

Willard Hurd, AIA, Chair
Alan Silverman, Vice Chair
Karl Kadar, Secretary
Scott Bradley
Alexine Cloonan
Chris Williamson

Commissioners Virtual:

Kazy Tauginas

Staff Present:

Renee Bensley, Director of Planning and Development
Paul Bilodeau, City Solicitor
Jessica Ramos-Velazquez, Deputy Director of Planning and Development
Katya Raskin, Planner I
Katelyn Dinsmore, Administrative Professional I

The Chair called the meeting to order at 7:01 P.M.

Chair Hurd: All right. Good evening, everyone, and welcome to the December 3rd, 2024 City of Newark Planning Commission meeting. We are conducting this hybrid meeting to the Microsoft Teams platform, and I would like to provide these guidelines for the meeting structure, so everyone is able to participate....do I really need to go through this with everybody? No, I'll do it, never mind, forget it. Sorry, guess I got confused there. At the beginning of each agenda item, I will call on the related staff member to present once the presentation is complete, I will call on each Commissioner on the dais for comments and questions of the Presenter. If a Commissioner has additional comments that they would like to add later, they should ask the Chair to be recognized again after all members have had the opportunity to speak. For items open to public comment, we will read into the record comments received prior to the meeting, followed by open public comment. If members of the public would like to comment on an agenda item and are attending in person, we ask that they sign up on the sheet near the entrance so we can get the spelling of your name correct, and then will be called on to speak at the appropriate time. If members of the public attending virtually would like to comment, they should use the hand raising function in Microsoft Teams to signal the meeting organizer that they would like to speak. All speakers must identify themselves prior to speaking. Public comments are limited to 5 minutes per person and must pertain to the item under consideration. Comments in the Microsoft Teams chat will not be considered part of the public record for the meeting unless they are requested to be read into the record. We follow public comment with any additional comments from the Commissioners, then the motions and voting by roll call. Commissioners will need to articulate the reasons for their vote for all land use items, all votes must be audible. If there are any issues during the meeting, we may adjust these guidelines as necessary. The City of Newark strives to make our public meetings accessible. While the City is committed to this access pursuant to 29 Delaware Code 10006A, technological failure does not affect the validity of these meetings, nor the validity of any action taken in these meetings.

59 **1. Chair's Remarks**

60 Chair Hurd: That takes us to item 1, Chair's remarks. I'm looking forward to the Delaware chapter's
61 American Planning Association Annual Conference tomorrow. I'm not sure who's going to be there.
62 But it'll have a couple of fun sessions, one on affordable housing and Max Walton's law review,
63 which is always fun. And I'm up for getting an award. So that's nice too, yeah.

64 **2. Minutes**

65 Chair Hurd: That takes us to item 2, review and approval of the November 5th, 2024, Planning
66 Commission meeting minutes. Any corrections or comments on the Minutes? All right, seeing
67 none, the Minutes are approved by acclamation.

68 **3. Review and consideration of an amendment to Chapter 32, Zoning to allow churches**
69 **and other places of worship as a by right use in the BB zoning district**

70 Chair Hurd: Takes us to item 3. Review and consideration of amendment to Chapter 32, Zoning, to
71 allow churches and other places of worship as a by right use in the BB zoning district. Director
72 Bensley. Is this yours? All right.

73 Director Bensley: Thank you. Before I get started, Chairman Hurd will be receiving the Citizen
74 Planner of the Year award from Delaware APA tomorrow. So, for the item that we have on the
75 agenda this evening, we are looking to add, or I should say move church and other places of
76 worship et al from a Special Use Permit to a by right use in the BB district. As I mentioned our last
77 meeting, we have been contacted by the NewArk United Church of Christ, which is located at 300
78 East Main Street, who are in the early stages of developing a project to redevelop their
79 approximately 1 acre site into a mixed-use multi story building to include a new church sanctuary,
80 offices and other church uses on the 1st floor with upper floors consisting of below market rate
81 apartment units affordable to low moderate income households. To achieve this project and to
82 assemble their financing, they would be partnering with an affordable housing provider and apply to
83 the State Housing Authority's Low-Income Housing Tax Credit program. As part of this, the City of
84 Newark has contributed funding in the amount of \$110,000 from the City's American Rescue Plan
85 Act Funds for the church to perform their initial engineering studies for the project. In reviewing
86 what they would need in the way of discretionary approvals, one of the items that has come up is
87 that they would need a rezoning from their current RD zoning to BB to be able to build a mixed-use
88 building in that area.

89 Right now, if you look at the BB code, the use of a church is a Special Use Permit, one of the issues
90 right now with the, or I should say one of the challenges right now with assembling financing for low
91 income housing tax credits is that when applying for permits, or I should say when applying for that
92 funding, anything that requires discretionary approvals is scored lower on their application,
93 because it is not guaranteed that it will be approved by the municipality. So, while we are working
94 with them to bring forward a Comp Plan amendment and a rezoning to get those discretionary
95 approvals out of the way, and looking at this particular one, we thought that while we could go the
96 route of having them apply for a Special Use Permit for a church at that location, in reviewing the
97 code, we thought it would be better to move it simply to be a by right use primarily because number
98 #1, if you look at Main Street, there are several churches already in the BB zone. Those churches
99 have not gotten Special Use Permits because they either predate the Special Use Permit process or
100 they were administratively approved as either an administrative error or as a social civic
101 organization, which is permitted by right in that area of code.

102 However, in looking at the Religious Land Use and Institutionalized Persons Act of 2000, which is a
103 federal law that protects individual houses of worship and other religious institutions from
104 discrimination in zoning laws, we feel that for this item in particular, it is a legal vulnerability for the
105 City to continue to have this be a Special Use Permit and to hold it to different standards than other
106 uses in the district, which is why we're recommending this change.

107 This amendment would be consistent with the Comp Plan, in that institutional uses are permitted
108 in BB, which includes churches. We also look at this as an issue potentially for other zoning
109 districts and we will be, or commercial zoning districts and we'll be submitting a future
110 recommendation to Planning Commission with a more comprehensive look at our Special Use
111 Permits and what we may want to shift to a by right use in various districts, the remaining districts

112 that this includes would be wrapped into that. So that concludes my presentation. If there's any
113 questions, please let me know. Thanks.

114 Chair Hurd: All right. I'll begin on my left with Commissioner Bradley.

115 Commissioner Bradley: So, there's no presentation for this tonight?

116 Director Bensley: No.

117 Commissioner Bradley: Oh, ok. There go those questions. I don't have any issues with it as I think
118 it's a good idea. Is it, going to be, is it something that's going to be similar to what Newark Housing
119 did with partnering up with a public entity to build and run the apartments?

120 Director Bensley: Most likely yes.

121 Commissioner Bradley: Ok, I have no other questions then.

122 Chair Hurd: Alright, Commissioner Kadar.

123 Commissioner Kadar: I have no issues.

124 Chair Hurd: Ok, Commissioner Silverman.

125 Commissioner Silverman: I have no issues with this proposal, and I don't see the residential
126 component having any different impact than a parish house or a seminary or a convent would.

127 Chair Hurd: Ok, Commissioner Williamson.

128 Commissioner Williamson: Thank you, just I guess couple questions to clarify, not so much
129 focused on this particular church itself, but in general, what the amendment would do. So many
130 times, a church, or a small group forming a church don't have a lot of money, and they often want to
131 go into industrial park spaces or vacant commercial storefronts anywhere. You know where they
132 can have an assembly of 50 or 60 people. So what regulations, what process would apply if a
133 church came in and wants to locate in an existing building in a BB District that was a former
134 commercial space, maybe it, given that a church use as an assembly, you've got to have exited and
135 all those other fire code type issues and then parking. How would that be processed?

136 Director Bensley: It would be. So, we have do have churches included as part of our business
137 licensing process, so they are not charged for a license, but they do have to be licensed. Part of
138 that is a fire inspection of the site, so making sure that they have what's needed for an assembly for
139 the fire inspection. Any renovations that would need to be done to the space, it would it be required
140 to pull building permits so they would have to go through that process as well in any related
141 inspections to that to make sure that all of the work was being done safely enough to code.

142 Commissioner Williamson: Is there any? Does parking come into this at all in any way?

143 Director Bensley: It would be reviewed under the same standards as any other, for this particular
144 district, it would be reviewed as any other standards for nonresidential space for a BB zone. So,
145 there's in BB we just have the standard for commercial or excuse me for residential and
146 nonresidential. So, the nonresidential space would be the standard.

147 Commissioner Williamson: Ok, so there's no specific parking requirement for a church, for
148 example.

149 Director Bensley: Not in BB.

150 Commissioner Williamson: Ok...and I think...were the church to not be able to do the
151 improvements per the fire department, then the use would not be allowed correct?

152 Director Bensley: Correct.

153 Commissioner Williamson: Ok, alright. I just wanted to kind of understand this. Those are the
154 typical review procedures you know, focused on public safety and fire safety.

155 Director Bensley: Right. And putting them through those review standards would be the same as
156 we would put any other business through. And I think that's the essential part of looking at the
157 equitability from a zoning standard is making sure that we're not holding churches to a standard
158 that is different from what we would hold other businesses or other uses in those buildings.

159 Commissioner Williamson: Ok, thank you, that's all.

160 Chair Hurd: And I'll just add the existing building code, which is what you would be using if you're
161 redeveloping or redoing a building, a change of use, which is what this would be, is the most
162 stringent level, which requires you almost to be compliant with the existing building code, I mean
163 the current building code because the existing building code has leniency. You'd be, you'd be
164 required as if you were building it as a new building. Commissioner Cloonan.

165 Commissioner Cloonan: I have one comment and one question. One, I like the idea of locating
166 churches in business districts because of the possibility of sharing parking. And the only other
167 question I had was, are there any restrictions on nearby businesses when there is a church? In
168 other words, is that bar allowed to be located within 500 feet or is there? Is there anything else that
169 might be impacted by church being here?

170 Director Bensley: There are some items that do require a distance from a church. I will say that
171 anything that's pre-existing would not be affected, they would essentially become existing non-
172 conforming at that point, but any new businesses that came in would have to conform to any
173 distance regulations.

174 Commissioner Cloonan: What sort of other than bars, is there anything else that churches impact?

175 Director Bensley: Restaurants with alcohol is the specific one that is coming to mind, but I'd have to
176 do a more thorough review of the zoning code to look at any others.

177 Solicitor Bilodeau: Possibly fraternity houses.

178 Director Bensley: That might be possible too, yeah.

179 Commissioner Cloonan: Ok, I have no other questions or comments.

180 Chair Hurd: All right. Thank you. Is there anyone present wishes to give public comment on this
181 item? Yes?

182 Ms. Dinsmore: Commissioner Tauginas is online.

183 Chair Hurd: Oh, I'm so sorry! Commissioner Tauginas, I even had you on my list.

184 Commissioner Tauginas: That's ok, you forgot about me. No, no questions, no questions.

185 Chair Hurd: Ok, then you, check the box on that one. Alright, thank you. Did we receive any e-mail
186 comments on this item?

187 Ms. Dinsmore: No, Mr. Chairman.

188 Chair Hurd: Is there anyone present who wishes to give public comment? Anyone online, who
189 wishes to give public comment? Closing public comment, bringing it back any further discussions,
190 comments, concerns.

191 Commissioner Williamson: Mr. Chair?

192 Chair Hurd: Yes.

193 Commissioner Williamson: Just a follow up question to your good question, again a situation. So, if
194 a church goes into, let's say, an existing commercial space and meets all the requirements and is
195 able to be there and there is a use nearby, bar or whatever, that now becomes legal, non-
196 conforming does the fact that the church has now come in, restrict the ability of that use to do
197 expansions and other kinds of things because they're now legal non-conforming?

198 Director Bensley: So, we have, we have sections in our zoning code that deal with existing, non-
199 conforming and a permitted percentage of expansion that it would be allowed without it coming up
200 to code, however, that's typically targeted toward non-conforming buildings and structures, not
201 non-conforming uses. So, I think that's something that we'd have to discuss internally with the
202 Solicitor before making a determination when that type of request moves forward.

203 Commissioner Williamson: Thank you.

204 Chair Hurd: Ok, if there's nothing further Secretary Kadar, we can move to the motion.

205 Commissioner Kadar: **I move that the Planning Commission recommend that the City Council**
206 **amend Chapter 32, Zoning, as detailed in lines 131 through 139 inclusive, in the Planning and**
207 **Development Department report dated November 26, 2024.**

208 Chair Hurd: Thank you. Do I have a second?

209 Commissioner Silverman: Second.

210 Chair Hurd: Any discussions to the motion? Alright, seeing none, we'll move to the vote.
211 Christopher Bradley.

212 Commissioner Bradley: I vote aye.

213 Chair Hurd: Commissioner Kadar.

214 Commissioner Kadar: I vote aye.

215 Chair Hurd: Commissioner Silverman.

216 Commissioner Silverman: I vote aye.

217 Chair Hurd: Commissioner Williamson.

218 Commissioner Williamson: Aye, aye.

219 Chair Hurd: Commissioner Cloonan.

220 Commissioner Cloonan: Aye.

221 Chair Hurd: Commissioner Tauginas.

222 Commissioner Tauginas: Aye.

223 Chair Hurd: And I am aye as well. Motion carries.

224 **Aye: Bradley, Kadar, Silverman, Williamson, Cloonan, Tauginas, Hurd**

225 **Nay: None**

226 **MOTION PASSED**

227 **4. Review and consideration of an amendment to Chapter 32, Zoning, to allow body art**
228 **establishments with a Special Use Permit in the BB and BC zoning districts.**

229 Chair Hurd: All right that takes us to item...where are we...item 4, review and consideration of an
230 amendment to Chapter 32, Zoning, to allow body art establishments with a Special Use Permit in
231 the BB and BC zoning districts.

232 Planner Raskin: Good evening, everyone, as a reminder, my name is Katya Raskin, and I started with
233 the City as a Planner in July of this year. Tonight, I will be providing an overview of the proposed
234 Chapter 32 Zoning amendment to include the classification of body art establishment, and a list of
235 permitted uses in the BB and BC zoning districts and add definitions as needed to define the
236 business. Tonight, we are joined by Brittnie Lopez, the owner of B13 tattoos in Wilmington,
237 Delaware, and her mother, Kim Lopez. Miss Lopez attended the October 28th Council meeting and
238 spoke about her desire to move B13 to Newark, during public comment.

239 To guide the development of the code revisions, staff consulted the Delaware Administrative Code,
240 more specifically, Title 16 Health and Safety, Section 4451, Body Art Establishments, which outlines
241 the regulations for body art establishments in the State of Delaware. While staff did not feel as
242 appropriate to add the entire State regulations to the City code, which would leave the code subject
243 to inconsistency if the State regulations were to change, they did want to ensure that items added
244 to City code such as definitions, were consistent with State regulations.

245 Staff also considered feedback from the November 11th City Council discussion in crafting the
246 proposed amendments. Concerns raised at the hearing included advertising and signage
247 associated with the businesses, appropriate regulatory oversight, transference of the Special Use
248 Permit from one proprietor to another at the location and desire for businesses to be by
249 appointment only, with no walk-in customers. The proposed amendments largely defer to the
250 Delaware Administrative Code regulations, both for the operation of the business as well as the
251 health-related inspections. These would be subject to the fire safety inspections required for all
252 licensed businesses in the City, and the City would also respond to any City code related

253 complaints. The Planning and Development Department contends that body art establishments
254 align with the economic development goals outlined in the Comprehensive Plan as it promotes
255 business diversity and small business establishment. The allowance of body art establishments in
256 Newark may serve as a signal that the City welcomes diverse forms of artistic and self-expression,
257 and the elaborate regulations at the State level for these establishments ensure that the fostering of
258 art and culture is safe and healthy. Thank you for your time and attention.

259 Chair Hurd: All right, I'm going to begin on my right this time with Commissioner Cloonan.

260 Commissioner Cloonan: I just have one question. Is tattoo artist the correct term for tattooists?
261 Tattooing. Yes? Ok. Are Tattoo artists and body piercing artists required to pass some sort of exam
262 and maintain a professional license of some sort? You know, like hairdressers and barbers and
263 things like that?

264 Planner Raskin: I should let Miss Brittnie Lopez answer that.

265 Ms. Lopez: Hello. Good evening, everyone, my name is Brittnie Lopez. So, in order to be a tattoo
266 artist, you have to go through a couple of things, one is blood pathogens. So, you do have to go
267 through entire course and a test to pass that and then there is the CPR certification. There is no like
268 school or college or anything like that for tattoo artists, but there are regulations that you have to,
269 kind of go through in order to receive a business license, which I have done all of that.

270 Commissioner Cloonan: And do you have to update those credentials?

271 Ms. Lopez: Yes, every year.

272 Commissioner Cloonan: Every year, ok, all right, that's the only question I had, thank you.

273 Chair Hurd: Ok, Commissioner Williamson.

274 Commissioner Williamson: Please stay there. No, I just wanted to, in the same vein...what health
275 related awareness and regulations do you have to provide? Do you have inspections by the health
276 department or something like that?

277 Ms. Lopez: Yes, so I go through the, the health inspector comes out, they approve me, they go
278 through the whole, everything, yes.

279 Commissioner Williamson: Ok, and is there, any requirement for sort of, first aid in case something
280 goes wrong?

281 Ms. Lopez: That's where the blood pathogens and the CPR certification comes in.

282 Commissioner Williamson: Ok, thank you.

283 Ms. Lopez: Yeah, of course.

284 Chair Hurd: Ok, Commissioner...sorry, Silverman.

285 Commissioner Silverman: I'd like to refer to the prepared text and direct my question to staff, on line
286 70, there's a distance requirement from schools of 200 feet. Given the effort and discussion that
287 went into the preparation of the ordinance, since there's a requirement of by appointment only,
288 which minimizes loitering and gathering, and there are rather significant restrictions on advertising
289 in windows, why is there a 200-foot minimum from schools?

290 Director Bensley: So, we included that because of the, honestly as a result of the recent debate
291 around marijuana retail stores because they're, they had similar restrictions on advertising and on,
292 you know on clientele, and outer appearance. And there was still a significant concern around the
293 school issue. So, we followed that, I believe staff would be amenable to the removal of that
294 provision if that is something that Planning Commission feels is unnecessary.

295 Commissioner Silverman: Ok, I believe there's quite a difference between an individual using this
296 particular service and then exiting into the public versus an individual who goes into a marijuana
297 retail facility and then comes out to meet a bunch of friends. I see the intent there, but I think
298 they're apples and oranges with respect to the impact it would have on school aged children. I'd
299 like to see that removed.

300 Chair Hurd: Anything else?

301 Commissioner Silverman: No, that's all.

302 Chair Hurd: Ok, Commissioner Kadar.

303 Commissioner Kadar: I just wanna, I noticed that throughout the proposed ordinance there was the
304 basis for the establishment shall operate by appointment only. No walk-ins will be permitted. Can
305 you please explain to me how the appointment system works?

306 Ms. Lopez: Ok, so I do everything on my own, so I don't have anyone that does it for me. I
307 individually talk to each client, I see what works for them, what's comfortable for them, and then I
308 book them according on their availability and then my availability.

309 Commissioner Kadar: Do you have a website?

310 Ms. Lopez: So, it's all through Instagram and I'm currently working on a website-

311 Commissioner Kadar: Ok so I come to the front door, I go in, I'd like to get a tattoo, do you have an
312 appointment? The answer is no. Would you like an appointment? Go to the website login. So, in
313 essence, yes, it's by appointment only, but it can be a walk in who makes an appointment.

314 Ms. Lopez: So, I do keep my door actually locked in privacy purposes. So, that way the appointment
315 that I do have at the time, it's their space. It's a safe space and I'm able to focus on them with me
316 being the only person in the shop, so I do keep it very, as organized as I possibly could.

317 Commissioner Kadar: Ok, so you would not open the door to someone you were not expecting?

318 Ms. Lopez: No, because I do not walk-ins.

319 Commissioner Kadar: Ok.

320 Ms. Lopez: So, I was going to say I do have a QR code that they are able to make appointments by,
321 but I just don't allow people to walk into my shop and make an appointment.

322 Commissioner Kadar: Ok, so you feel comfortable that this could not be abused?

323 Ms. Lopez: Oh, yeah. 100 percent.

324 Commissioner Kadar: Ok, that, I'm fine. Thanks.

325 Chair Hurd: Ok, Commissioner Bradley.

326 Commissioner Bradley: So, following up on Commissioners Kadar's question. I don't know if you
327 can answer this, but how many body art parlors are by appointment only would you say? I mean is it
328 the majority, or is it a minority?

329 Ms. Lopez: I believe most tattoo parlors are walk-ins, and they do both, if I'm not mistaken, but
330 that's where I'm a little different than everyone else. So, I do try to focus on appointment only. I do
331 private events, but that, it's very minimal, very organized, I try to be on top of that as much as I can.

332 Commissioner Bradley: So, you would, if all this were approved, you would be the first body art
333 parlor in the City of Newark, and it would open up the ability for others to come in. All the others
334 will have to be by appointment only if this passes the way it is, would that be detrimental? Do you
335 think to other tattoo parlors? Body art parlors?

336 Ms. Lopez: Everyone runs their business differently. I don't think it would be an issue, but I know it's
337 not something that's very common, where tattoo artists are appointment only, but because I don't. I
338 also do not offer piercings, so I will not be doing piercings in my shop, so it's strictly tattooing, but
339 yeah, with me being the owner and the only artist, I keep it very minimal, so I can't really speak on
340 other businesses, but I've been running my business like this by appointment only for about 3 years
341 straight and I've had no issues with it.

342 Commissioner Bradley: Is this mainly for safety reasons you do this?

343 Ms. Lopez: Between safety and I do promote a safe space, so I want my client or whoever is in my
344 chair to feel as comfortable as possible, so.

345 Commissioner Bradley; Meaning they're the only customer in there at the time.

346 Ms. Lopez: Yes.

347 Commissioner Bradley: So, it's more for how you run your business as opposed to how the industry
348 kind of operates as a standard?

349 Ms. Lopez: Yes.

350 Commissioner Bradley: What do you do about needle disposal? How's that handled?

351 Ms. Lopez: I have certain containers that everything gets disposed of properly and they do get
352 removed and taken out of my business and everything.

353 Commissioner Bradley: It doesn't go into general trash?

354 Ms. Lopez: No.

355 Commissioner Bradley: Ok, kind of like a Lab Corp type thing?

356 Ms. Lopez: Yes, they get packaged properly and we have to like, put it in places and put it in a box
357 and then another box, but yes it does get taken care of.

358 Commissioner Bradley: You said you're not gonna do body piercings at your studio. In here I guess
359 my question might be to staff or might be to you, but it says that ear piercings are not considered
360 body piercings. Is that how, I was a little confused about that?

361 Director Bensley: So, the State regulations distinguish body piercings from your, if you think about
362 like the gun type ear piercing, that is not considered body piercing under state establishment or
363 under State regulations.

364 Commissioner Bradley: Could a body art studio still perform those, or no?

365 Director Bensley: They could, but they just wouldn't be regulated as body piercings by the State.

366 Commissioner Bradley: Ok, but they could do ear piercings-

367 Chair Hurd: If they only did ear piercings like that, they wouldn't be regulated. But if they do it as
368 well as other, they can do it as part of, yeah.

369 Commissioner Bradley: So, they could do ear piercings in addition to body piercings. But people
370 that do ear piercings like a jewelry store, whatever, at the mall, they can't do, that was more
371 curiosity than anything else. How many visits do you do typically or consultations do you typically
372 go through with somebody before they actually apply the art?

373 Ms. Lopez: So, I do everything by phone or Instagram, or they can video message me and I talk with
374 them. Personally, I don't like doing a booking website cause then it's you click on a link you upload
375 some pictures and that's it. I like to get to know my clients, I like to build that little mini relationship
376 so that way when they do come into my establishment, they're comfortable.

377 Commissioner Bradley: So, they know, and you already know what the artwork is before they come
378 in.

379 Ms. Lopez: Yes, and then if we need to make any changes or alterations, we do that at the
380 appointment.

381 Commissioner Bradley: Ok...now I think in here somewhere the proposed location is in the Frolic
382 building. Is that correct?

383 Ms. Lopez: Yes.

384 Commissioner Bradley: Is it by chance on the lower level?

385 Ms. Lopez: Yes.

386 Commissioner Bradley: So one of the tenants that used to be there, Romanick Pottery when they
387 were there, you pretty much didn't know they were there unless you knew they were there, or they
388 put their little A-frame sign out on the sidewalk, and I know signage is a big thing on Main Street,
389 would they be allowed to put a A-frame sign on the sidewalk, like Romanick used to?

390 Director Bensley: So that's not permitted under the restrictions that are in this, which are based on
391 one the discussion that came through Council, but two, also in working with Ms. Lopez and on the
392 type of signage that they have at their current location, and what would be amenable for that, I think

393 as far as the concern about, you know, knowing they are there or not there if you're by appointment
394 only, you're going to know where you're going. So, it's not as much about attracting walk-in street
395 traffic as it is about, you know, the location being a space that is by appointment only.

396 Commissioner Bradley: Ok, I would echo what Commissioner Silverman said about removing the
397 200-foot distance, if it's by appointment only, but my personal opinion is I'd like to see this to be
398 allowed for walk-ins also. I think if we want to have this type of establishment within the City
399 boundaries, we're going to be limiting ourselves to appointment only places, I think you'll do great
400 there, but I think it'd be nice to see it opened up like a standard tattoo parlor, sorry, body art.

401 Ms. Lopez: So, can I add?

402 Commissioner Bradley: Sure, go ahead.

403 Ms. Lopez: So, I can do same day appointments too, so as long as you do have a slot, I just can't
404 take in someone walking down the street and they decide they wanna get a tattoo, you know? That
405 kind of thing. So, I definitely can still do, if they wanna come back later in the day and still book an
406 appointment for that same day, they absolutely can.

407 Commissioner Bradley: But I'm not a tattoo guy, so, and I've got nothing against tattooed people,
408 but my theory is if I wanted to get a tattoo, I'd probably go to a tattoo parlor maybe one or two times,
409 check things out, feel comfortable about it, and then come back to do it. Making an appointment to
410 do so for one or two times, then coming back to do it would seem a little odd for me, but I'm older
411 than you are obviously, but I think this I think this would add some flavor to the City of Newark. But
412 thank you for your time.

413 Ms. Lopez: Thank you.

414 Chair Hurd: All right. I'll just add cause I only have experience with one spot, where my daughter's
415 gone. They had multiple artists and so.... I'm so sorry, Commissioner Tauginas, before I jump in.

416 Commissioner Tauginas: That's ok, I thought you were saving me for last. I don't have any
417 questions, I just, I support the right to self-expression. I'm excited to see this come up on Main
418 Street and I think that Miss Lopez's business model, if it works for her, I think you know, and it and it
419 works for the City by appointment only, you know there's got to be a certain level of comfort for
420 everyone involved, and I applaud her for, you know, stepping out of the norm and doing what works
421 for her, so I intend to support the project.

422 Chair Hurd: Alright, thank you. Alright, back to my point. I think establishments that have multiple
423 artists can handle walk-ins more effectively because they're like, oh, I'm busy, or I have a slot,
424 there's a thing, you know. So, I think the thing to Commissioner Bradley's point and such, what I'm
425 concerned about is being so narrow in our definition for how this Special Use Permit is that it
426 excludes other businesses that might not have the same model. Because it's a Special Use Permit,
427 I think it's very valid to say, if we could take it out as a requirement, it's certainly a piece of what, like
428 when you come to apply for the Special Use Permit, you say I don't do walk-ins, I only do
429 appointments, and that means oh ok, yeah, we'll grant the special use permit because we like the
430 way you're operating the business and it's not going to be disruptive. But I think I'm concerned
431 about, as it were, legislating a business model in the code. And I know Mayor Clifton has spoken on
432 that a couple of times before. So, I think I'm also in favor of removing the minimum distance and I
433 think I'm gonna be in favor of removing the requirement that the establishment be appointment
434 only. So, those are just the two things. Any public comment submitted online?

435 Ms. Dinsmore: No Mr. Chairman.

436 Chair Hurd: Ok, is there anyone present who wishes to give public comment? Ok.

437 Mr. Reynolds: My name's Mikey Reynolds.

438 I've been a resident of Newark for 51 years, living in this city I own and operate Pinstruck Tattoos for
439 25 years. My concern is how many shops are you going to let come down here? Because I've been
440 forced out of working in the city that I was born and raised in for 25 years, my business was
441 discriminated upon. I've been trying to come to Newark for 25 years, I've been shut out for 25 years.
442 I've been forced to have to sign a lease with other people outside of the City. That's one of my big
443 concerns about this, so anything that's going to come down here is going to affect my business on
444 the outside that I have at least signed because the City would not let me down here for 25 years. All

445 my friends have businesses down here, Switch, Peach Blossom, Bloom, Little Goat. These are all
446 my friends. I grew up with where my business was never allowed to come down here. I had an
447 opportunity to buy Switch from Jim Tunis, where Little Goat is now to bring my shop down here. The
448 City refused me. You guys allowed Zinnia Lounge to open up on Main Street, a fully functional
449 tattoo shop that sat there for two years operating. When I complained about a business coming
450 down here, they came in front of the board with an idea of doing face tattoos, make up on women,
451 they were doing a fully functional tattoo shop there. I complain to the City if you're going to allow
452 this down here, why can't my 25-year-old business come down to Main Street, not even on Main
453 Street, I was like, let me in Newark Shopping Center so I have the parking. I employ a lot of people.
454 I've been here for 25 years, and I've been a resident living in this City for 51 years, so my concerns
455 are you guys allow people to come down, you're going to have so many tattoo shops coming down
456 here, half of these people don't know what they're doing, you know, my business has to be suffering
457 on the outside that's been there for 25 years. I'm the oldest shop in Newark Delaware, the oldest
458 shop in Newark. So, I'm stuck in a lease out here, I can't do nothing for seven more years. If you, if I,
459 even if you guys allow this. Right? I can't do nothing for seven years. So, in that seven years, how
460 many shops are going to come down to Newark and suffocate my business that's been there for 25
461 years? And that's one of my concerns that's why I'm here today, you know, because like I said
462 before, the City of Newark discriminated against me for 25 years. So that is a big concern with me
463 and now, if I wanna move my business down here, I can't break my lease. If I wanted, I couldn't buy
464 a Switch off of Jim Tunis because my business wasn't allowed down here.

465 I had an opportunity to buy a business and a building and, you know, move my business down here
466 and the city wouldn't let me. And that that's not fair for my business on the outside. So that's one of
467 my big concerns, you know, it's one of my big concerns because I've been here the longest in
468 Newark and I employ 5 people, including myself, so that's, that's where I'm that's where I stand with
469 that. You know, I don't think it's fair to me that this is coming up now when I've tried this for 25 years,
470 I've talked to Mayor Funk, I've hired a lawyer, Max Walton. I don't know if any of you guys know him.
471 I've talked to Max, he's good friend of mine and I've always gotten the thumbs down. You know what
472 I mean? I don't care about being the first tattoo shop because there was already a tattoo shop here.
473 It's not about being first. Like I said, there was a tattoo shop operating above Grotto's Pizza in that
474 little place for two years. It's not there anymore, the guy shut it down, but that was my concerns,
475 you know? And I asked, I talked to Max and was going to ask him to come down and speak about
476 this with me because I've reached out to him through the years. I grew up with him and same with
477 Funk and I don't know if you guys know Jim Tunis, that owns Switch, you know, he was going to offer
478 me to sell me that business when he when he sold Switch and Switch moved on to Main Street, but
479 what am I going to do with a building when I can't, wasn't allowed to put my business in there?

480 Commissioner Bradley: What is Switch?

481 Mr. Reynolds: Switch is a skateboard shop that's on Main Street. And I think that's a concern that I
482 have.

483 Commissioner Bradley: So, are you against the City allowing?

484 Mr. Reynolds: I'm not against it, I just think that I know what's going to happen, you know, I know
485 that like, what I would recommend is maybe limit the licenses you hand out because what are you
486 going to do? It's just like the coffee shop down there. When Switch wanted to go in as a skateboard
487 shop back in the 90s, the City shot it down because you wanted to put a coffee shop in there, they
488 didn't want a coffee shop on Haines Street, so they allowed them to open up a skateboard shop.
489 And now there's probably 20 coffee shops down there.

490 Commissioner Bradley: So, what about if there was a required distance between shops?

491 Mr. Reynolds: I think something like that should be done because I know exactly what's going to
492 happen. You're going to get so many scratchers and so many people that don't know what they're
493 doing to flip a shop, open there, then you're going to be into a situation where you have. People with
494 Hepatitis-C break out if you don't, if you're not a fully disposable tattoo shop, you have to have an
495 autoclave. You have to run a spores test every 30 days. You have to run a spores test to make sure
496 your autoclave is killing Hepatitis C. So, who knows if these people are going to be doing that, you
497 know. Are you fully functional, disposable? You don't have to have an autoclave. But if you're using
498 piercing needles or any kind of instrument that's going on the body, you have to run a spores test,
499 it's in the law, it's part of what they require because I was a part of helping the State of Delaware

500 design the body art establishment, because when I first opened up my shop, you didn't have to
501 have a license for how many sinks you have to have, you know how much lighting you have to have,
502 how much square footage you have to have? You know, that's all in, that's all in the design, You got
503 to have enough square footage in between stations to stop spread of germs and all that you know,
504 you've got to have the proper lighting, you have to have so many hand sinks per artist. If you have
505 three tattoo artists, you have to have one hand washing sink. If you have 4 tattoo artists, you have to
506 have two hand washing sinks. So there's a lot like, like I said, I was part a big part of designing what
507 the State of Delaware regulations were to have a body art establishment because before they didn't
508 have a license you didn't have to pay for a license, all you had to have was a business license to
509 operate a tattoo shop until 2002 when they started forming a license that cost you \$100 a year.
510 They come in and inspect you once a year.

511 Commissioner Bradley: So, you're only inspected once a year?

512 Mr. Reynolds: Once a year. And this year was the first time in nine years they inspected me.

513 Commissioner Bradley: Now do you feel that this city is a prime location because of the students –
514 is that why there'd be so many artists here?

515 Mr. Reynolds: Like I said, I've been here 25 years, 90% of my business as walk in tattooing comes
516 from the University of Delaware. So, if I'm stuck in a lease for seven years...

517 Commissioner Bradley: And where are you located?

518 Mr. Reynolds: I'm located in Chesmar Plaza Shopping Center. I'm the closest tattoo shop to Newark
519 because I've been forced out of the city limits for 25 years, so I'm right over there on Brookside,
520 where the ShopRite is. But yeah, that's a concern with me. If you get 20 shops moving down here,
521 which I know Damien's going to come down here right away, I just know it. You don't know he is, just
522 know he opens up shops everywhere and he'll hire anybody. He doesn't care what you know, how to
523 tattoo, what your tattoos look like he'll hire anyone to pack people in there you know what I mean?
524 Like I know that's exactly what's going to happen, you know. And I'm worried about my business
525 suffering on the outside, you know, because like I said, 90% of my walk-ins come from the
526 University of Delaware when the students are in. The other half appointments, no tattoo shops
527 going to work on appointment only. Unless you're some bigwig tattooer it's not going to happen.
528 And what would you do if you can't? If you had a business and somebody came in and you're gonna
529 turn business away when you got rent to pay? You know what I mean? I wouldn't do that.

530 Commissioner Bradley: Well, I think her business model works for her. And that's what's important
531 for her.

532 Mr. Reynolds: And it works that well for a lot of other people too. Yeah, I understand that and I'm not
533 knocking her at all you know, I'm just saying, I can't tell anyone how to run their business, you know
534 I just know how I've run my business for 25 years; you know.

535 Commissioner Bradley: Thank you.

536 Chair Hurd: Thank you very much.

537 Mr. Reynolds: That's it? Are we good?

538 Chair Hurd: Yeah, you're not really a presenter, but I mean we appreciate your experience for this.
539 Thank you. Anyone else?

540 Ms. Dinsmore: We did have one person sign in, Kelly Rivera.

541 Chair Hurd: Ok, thank you.

542 Ms. Rivera: Hello. I'm Kelly Rivera and I'm a 26-year Newark resident and a proud parent of a
543 freshman at University of Delaware. I just want to say that I mean, I have been, my family members
544 have been customers of Brit's and have said wonderful things about Brittnie. And my freshman, my
545 daughter, who's 18, was interested in a tattoo and came to Brittnie with a few ideas and Brittnie sat
546 her down and basically said that until she could feel as though my daughter had a vision of what
547 she wanted, she would not put a tattoo on her because this is something that will be with her
548 forever, so I mean, I just feel like her business is a positive. She really, truly does believe in her
549 customers. And when she says about the walk-ins, I mean it is something that she does do with

550 appointment only. My niece has gone there, and I just feel as though for being living in Newark and
551 my daughter, it would be a great establishment for our city. So just wanted to do a shout out.

552 Chair Hurd: All right. Thank you.

553 Ms. Rivera: You're welcome.

554 Chair Hurd: Any further comment? Anyone online wishing to give public comment? Alright, seeing
555 none, closing public comment and bringing it back. So that does bring up a question, so we're
556 thinking about number of establishments and such because I don't have the code committed. Are
557 there other establishments that need a special use permit that have distance regulations from each
558 other, like do bars or liquor stores or things like that have a distance from each other, yeah?

559 Director Bensley: Marijuana retail stores would be the only one that comes to mind, and that's
560 something that's in the state code, that's not in our zoning code.

561 Chair Hurd: Ok.

562 Solicitor Bilodeau: We used to have the distance requirements for gas stations.

563 Director Bensley: But that's not in the code anymore.

564 Commissioner Williamson: Is adult entertainment not in the code?

565 Director Bensley: It is very heavily restricted.

566 Commissioner Bradley: Where are they?

567 Commissioner Williamson: I mean, that's a classic one.

568 Chair Hurd: Is a classic one. Alright cause, I appreciate the concern about overwhelming the
569 market, I think at least in the BB zone or and such that we're looking at, there's not as many open
570 spots and it's not as likely that I think it's gonna get, but, but I think the Special Use Permit does
571 allow us or allows the Council some discretion on applications. So that they could, they could
572 probably say that they're too close or too many. Any further comments or discussion?

573 Director Bensley: So, if I could just say,

574 Chair Hurd: Yes.

575 Director Bensley: In response to some of the comments by Commissioners, particularly around
576 the, subsection D, with the appointment only versus walk-ins. When we have created new uses in
577 the code, we have tended to be more conservative with how those have been introduced in order in
578 part to have enough comfort level with Council to get the votes needed to allow the new use. During
579 the November 11th discussion, which there was, the draft minutes for that were in your packet,
580 there was more than one Council member that expressed reservations about allowing body art
581 establishments in Newark, but that they would be willing to consider it with the walk-in versus
582 appointments versus walk-in provision so that's in part why it was included in the draft that's before
583 you. It's one of those...we are changing several decades of precedent in Newark by allowing this
584 type of use, and there are folks who may be more comfortable with starting that slowly as opposed
585 to a wider net in the beginning. That's not to say that if we were to have someone reach out to us
586 who is interested in opening a business in Newark, that would not, that is interested in changing
587 some of these that we wouldn't bring some sort of amendment in proposal in the future like we're
588 doing now because we were approached by a business who is interested in doing this in Newark.

589 Commissioner Bradley: How do you...how do you police walk-in only? I think Commissioner Kadar
590 kind of pointed out and the young lady kind of pointed it out that she can do same day if she's got a
591 slot.

592 Director Bensley: It would be the way we police many other things in the code which would be
593 complaint-based enforcement, so if we got a complaint, we would investigate it-

594 Commissioner Bradley: -walk-in only and person can just stand outside the door and say, hey, can I
595 come in? Sure, walk on in.

596 Commissioner Kadar: Maybe send underage in, like alcohol checks.

597 Commissioner Bradley: So, I mean it's, there's ways around everything.

598 Director Bensley: I would offer that about a large portion of our code. Does that mean we don't put it
599 in the code? That's a policy decision.

600 Commissioner Bradley: I guess my two cents would be, add a distance regulation, remove
601 appointment only, but have a pretty decent distance regulation. That'd be my opinion.

602 Chair Hurd: Between establishments?

603 Commissioner Bradley: Yes, maybe 1000 feet or something.

604 Chair Hurd: Ok. Any other comments or questions before we move to the motion? Discussion?

605 Commissioner Cloonan: I know this is just pertains to this particular establishment, but the fact
606 that she's a single woman operating this establishment, makes it to me, extremely unlikely that she
607 would just let anybody walk in office walk-in off the street. That's not my concern in this case.

608 Chair Hurd: Right, but we're not writing this code for the business in front of us we're writing it for all
609 of the businesses that are coming in, so I mean I share the concern of this being too restrictive, I
610 understand Director Bensley's statement about how Council is going to take it, and we've had it
611 before, where we've taken stuff out and the report has been sent to the Council to sort of go, to say,
612 here's the thing that they took out, if you want to put it back in, this is what you do. So, Council can
613 take our recommendation and change it and add it and say, oh yeah, we wanna make it only
614 appointment only and that's fine. But no, we're working at our level and looking at general planning
615 principles because there's nothing that says you have to take walk-ins. It's just saying we don't
616 wanna limit it to places that don't, that we don't say, if you if you take walk insurance, you can't be
617 here? That doesn't seem as fair.

618 Director Bensley: I would also offer that, in response to the enforcement mechanisms, since this
619 will be by Special Use Permit, Special Use Permits can be revoked so that offers, I think, a pretty
620 good incentive not to violate the terms of the Special Use Permit.

621 Commissioner Bradley: But again, that would be complaint based, it's not like you're policing that
622 establishment, you're just, if somebody calls and files a complaint, you follow up on that, and if you
623 find that, yes, they violated it, then you can revoke it. But somebody would have to complain first,
624 right?

625 Director Bensley: Yes.

626 Commissioner Bradley: Ok.

627 Director Bensley: People will...well. Part of the reason we're complaint based is because we get so
628 many complaints, so I have a feeling it would come up quickly.

629 Commissioner Williamson: Mr. Chair?

630 Chair Hurd: Hold on, Commissioner Silverman has something.

631 Commissioner Silverman: My feeling on limiting the number of establishments and establishing
632 distance standards. I think it goes against the planning philosophy and business philosophy and
633 economic development philosophy that's outlined in the comprehensive plan for promoting
634 businesses within the CBD in Newark. As the illustrated map in the packet shows, there are
635 relatively few opportunities associated with the zoning district. So, putting distances between may
636 not be practical, and then from another point of view, I'm going to assume since I don't frequent this
637 particular use, that there's a relatively small footprint. We're not talking about two and 3000 square
638 feet of occupied space, one of the complaints about Newark that I'm aware of is the space,
639 particularly in older buildings, is too small to accommodate some of the newer business models. If
640 you don't have 1500 or 2000 square feet a franchise isn't even interested in you. So, the kind of
641 business that we're hearing tonight, you know, regardless of its use is a good backfill for the smaller,
642 harder to lease places in the City of Newark. And if we start putting distance between businesses
643 and, or an arbitrary number of the kind, the number of businesses you can have within the City. I
644 think it goes against that kind of thinking. Thank you.

645 Chair Hurd: Ok.

646 Commissioner Bradley: But if you have zero distances between businesses, your kind of relying on
647 the strip malls and the property owners to kind of police that for us, so I mean sometimes they have

648 regulations in a strip mall that says you can't have two donut shops or two of this type of shop. I
649 mean, if the gentleman is correct and he thinks that there's going to be a ton of tattoo parlors
650 coming in Newark, you could have three tattoo parlors in the Newark Shopping Center, I mean, it's
651 an extreme, but it would be possible. So why not put some limitations like we did with the retail
652 marijuana?

653 Commissioner Silverman: I think you'll find with the single retailer that they're not interested in
654 bringing competitors to a business that they've courted and put into a center for the same reason
655 that BJ's can't sell gasoline because that site has an agreement with the gasoline station that's on
656 site.

657 Commissioner Bradley: But it could happen.

658 Commissioner Silverman: I'm just going to stop there.

659 Chair Hurd: All right. I think Mr. Williamson had a question.

660 Commissioner Williamson: Yes, thank you. A question for staff, in the Special Use Permit process or
661 and or business license process. Is there an opportunity for the City, the Police Department or
662 someone to do a background check on the applicant? Not so much a criminal background check,
663 but was this business located in another jurisdiction? You know, did you have this business before
664 in Smyrna or some other town? And you call that town and say, was that a, you know, like a Better
665 Business Bureau jurisdiction background and you charge a fee for that as part of the business
666 permit? Perhaps that is a way to, discourage, I guess, or at least give some, weed out the
667 businesses that you sort of say are not so good and they just show up. So that's a question.

668 Director Bensley: So, this business like any business in the City of Newark would have to have a
669 license in good standing with the state as part of the process. And they would have to present their
670 state business license documentation when they are applying for their business license here. The
671 only types of businesses right now, that, or I should say types of licenses that we do, any type of
672 background checks for right now are ones that involve going door to door to people's homes. So,
673 like peddler, vendor type licenses and that is more for a you know a, you know, we've all seen the
674 reports of higher risks of fraud, and you know, some of the issues that have come with some
675 businesses that do door to door type businesses, we don't have any other. And the only other
676 businesses I can think of that would require some type of background check would be ones that
677 require that on the state level, so looking at like childcare centers and things like that, where there's
678 their background check requirements. Typically, we do not have that, we do not, outside of the
679 peddler vendor permit process we do not do background checks for business licenses outside of
680 what the state requires for various business types.

681 Commissioner Williamson: Could the City have a requirement for that in some cases, I mean
682 Council, I have to approve it, of course. And correctly state reasons and parameters and all that.

683 Director Bensley: I don't think that is necessarily pertinent to the land use decision for a zoning
684 code amendment, that would be something that I think would be more appropriately considered as
685 part of business licenses, which would be Chapter 13, which is not under this board's jurisdiction.

686 Commissioner Williamson: Ok, thank you.

687 Chair Hurd: Ok, all right. Why don't we move to the motion Secretary Kadar, with the understanding
688 that...I guess I'll probably do it, bring forward an amendment to that motion so that we can, we can
689 discuss or vote on eliminating or just or editing the distance and editing the appointment versus
690 walk in section.

691 Commissioner Kadar: I was going to ask for clarification because I heard I heard several
692 Commissioners request the removal of the distance requirements in line 70 and 71, that was one,
693 and the second one was the removal of the walk-ins and appointments only requirement. So, I'd be
694 inclined to say we have two motions on those, and then we can make the final motion on-

695 Chair Hurd: So I was gonna do it the way we often do, which is we make the motion for the language
696 as it is, and then I can propose an amendment to the motion that is eliminating this item, we can
697 discuss that we can vote on it, and then we can, and so we can do that and we can do the walk in
698 section, get the get the consensus of the of the...

699 Commissioner Kadar: Ok.

700 Commissioner Bradley: Chair?

701 Chair Hurd: Yes.

702 Commissioner Bradley: Will there be Commissioner Silverman's amendment to eliminate the
703 distance and then an amendment to add a distance?

704 Chair Hurd: That could be a second, there could be a second one.

705 Solicitor Bilodeau: It sounds like there will be three separate amendments coming.

706 Chair Hurd: Yes, ok, we can do that.

707 Commissioner Kadar: Ok. So, the initial motion, **I move that the Planning Commission**
708 **recommend that City Council amend Chapter 32 Zoning, Section 32-4, Definitions; Section 32-**
709 **18, BB (central business district); and Section 32-19, BC (general business) by adding body art**
710 **establishments as an allowable use by special use permit as outlined in the Planning and**
711 **Development Report dated November 26, 2024.**

712 Chair Hurd: Thank you, do I have a second?

713 Commissioner Bradley: Second.

714 Chair Hurd: All right. So, I'll propose the first amendment to the motion, which would be **to remove**
715 **item A for both BB and BC language, removing the minimum distance requirement between**
716 **the use and a lot of use as a public or private elementary, junior or senior High School.** Do I
717 have a second?

718 Commissioner Silverman: I'll second.

719 Chair Hurd: Ok, any discussion to that motion? Start with the vote. Let me sure I get the things
720 here... Commissioner Bradley:

721 Commissioner Bradley: I vote aye.

722 Chair Hurd: Commissioner Kadar.

723 Commissioner Kadar: I vote aye.

724 Chair Hurd: Commissioner Silverman.

725 Commissioner Silverman: I vote aye.

726 Chair Hurd: Commissioner Williamson.

727 Commissioner Williamson: Aye.

728 Chair Hurd: Commissioner Cloonan.

729 Commissioner Cloonan: Aye.

730 Chair Hurd: Commissioner Tauginas.

731 Commissioner Tauginas: Aye.

732 Chair Hurd: And I am aye as well, ok, item A is removed.

733 **Aye: Bradley, Kadar, Silverman, Williamson, Cloonan, Tauginas, Hurd**
734 **Nay: None**
735 **AMENDMENT TO MOTION PASSED**

736 Chair Hurd: I now propose an amendment to the motion, adding new language, **proposing a**
737 **minimum distance between the uses.** Do I have a second?

738 Commissioner Williamson: Second.

739 Chair Hurd: Ok. Any discussion to the motion, such as a number for the distance?

740 Commissioner Bradley: I will throw out 1000 with any opinions open after that.

741 Chair Hurd: One thousand is a lot of feet.

742 Commissioner Bradley: It's 1000 of them.

743 Chair Hurd: Any discussion or concern on the distance of 1000 feet?

744 Commissioner Cloonan: I don't think it's necessary.

745 Chair Hurd: So, you could vote against that-

746 Commissioner Cloonan: It's a discussion?

747 Chair Hurd: It is a discussion, like, do you want to propose or offer a friendly amendment to change
748 the number or anything? Or just leave it as it is, and have it taken its chances?

749 Director Bensley: So, just trying to get some perspective here as to what in reality that would be.

750 Commissioner Bradley: What are our city blocks, let me ask you that first. About?

751 Director Bensley: I'm not a Public Works person, so I can't give you that.

752 Chair Hurd: They're not the same, that's for sure, yeah.

753 Director Bensley: So, what I can say is that using the example of the building where Miss. Lopez is
754 proposing her business, any distance.... or a 1000 feet radius for that would go...

755 Commissioner Bradley: Yeah, it might be a bit big.

756 Director Bensley: Would basically mean from.... oh, what is that...from Haines Street to the
757 Pomeroy Trail. There could be no other body art establishments.

758 Commissioner Bradley: I'd like to revise that down please.

759 Chair Hurd: Ok.

760 Director Bensley: Oh, I'm sorry that, hold on. It didn't take my 1000 that was just 300 feet.

761 Commissioner Silverman: 1000 feet would go out to McDonald's...

762 Director Bensley: 1000 feet would be from...so past the...oh where's that...Academy Street, so the
763 Barnes and Noble, down to the new building at 268 East Main Street, that's 1000 feet in each
764 direction.

765 Commissioner Bradley: Ok, since we already have a precedent set with retail marijuana 300, I'd like
766 to go to 300.

767 Director Bensley: Well, no, retail marijuana is 1200.

768 Commissioner Bradley: I thought we did 3?

769 Director Bensley: We didn't do anything. We did 300 from a school.

770 Commissioner Bradley: Oh, we did 300 from a school.

771 Director Bensley: The distance between at the state level is 1200.

772 Commissioner Bradley: I'll throw out 300.

773 Chair Hurd: Ok.

774 Director Bensley: So, 300 is the is what I said before from Haines Street to the Pomeroy Trail, that's
775 300 in each direction.

776 Commissioner Bradley: Ok, hopefully there'll be some discussion.... ok I'm going to keep it at that.

777 Chair Hurd: You gonna stick? Ok, all right. So, is there a second for the **motion to add the distance**
778 **between uses of 300 feet?**

779 Commissioner Williamson: I'll second.

780 Chair Hurd: Ok, any discussion to that motion?

781 Commissioner Cloonan: I just wanna be clear, is this is this to limit the number of possible?

782 Chair Hurd: Yes.

783 Commissioner Cloonan: Businesses, ok.

784 Chair Hurd: To distribute them throughout the city so that they're not overloading and to limit,
785 effectively limit the number of establishments you could have in the City.

786 Commissioner Cloonan: Ok, all right.

787 Chair Hurd: All right, to the motion. Commissioner Bradley.

788 Commissioner Bradley: I vote aye.

789 Chair Hurd: Commissioner Kadar.

790 Commissioner Kadar: I vote aye.

791 Chair Hurd: Commissioner Silverman.

792 Commissioner Silverman: I vote no because it's Council's discretion through the Special Use Permit
793 as to the number of establishments in the City.

794 Chair Hurd: Ok, Commissioner Williamson.

795 Commissioner Williamson: I vote aye.

796 Chair Hurd: Commissioner Cloonan

797 Commissioner Cloonan: I vote aye.

798 Chair Hurd: Commissioner Tauginas.

799 Commissioner Tauginas: Aye.

800 Chair Hurd: I vote nay for the reasons stated by Commissioner Silverman, but that motion passes 5-
801 2.

802 **Aye: Bradley, Kadar, Williamson, Cloonan, Tauginas**
803 **Nay: Silverman, Hurd**
804 **AMENDMENT TO THE MOTION PASSED**

805 Chair Hurd: Ok, moving to the third amendment to the motion, which is for the language of item D
806 to remove the restriction on appointment only and to allow the business to operate either as an
807 appointment only or walk ins. Do I have a second?

808 Commissioner Williamson: I'll second.

809 Chair Hurd: Any discussion to that motion?

810 Director Bensley: If I can ask a clarification question, are you looking only to eliminate what's in line
811 78 or are you looking to eliminate all of subsection D which also has the limits as far as the number
812 of people who can be at events held?

813 Chair Hurd: Let's say that we **are striking everything up to the word events...with some editing of**
814 **the languages needed to say that event will not exceed 15 persons or the allowable occupancy**
815 **for the use, whichever is lower would be allowed. Just remove the language around**
816 **reservations in advance and the appointments and walk ins.** Ok, is that clear to people, so no
817 discussion, no? Yes, Commissioner Silverman?

818 Commissioner Silverman: Do we need to make a motion?

819 Chair Hurd: I just made the motion; we had a second.

820 Commissioner Silverman: Where did the number 15 come from? We've heard testimony from a
821 gentleman who's been in the business for 25 years, that he runs a shop that is comfortable with five
822 so.

823 Chair Hurd: So, this is just for events. So, if you have an event in the space, you can't have more
824 than 15 people over the occupancy. It's not about total number of people in the shop at one time
825 getting tattoos.

826 Commissioner Silverman: Ok, thank you. It says no walk-ins permitted...

827 Chair Hurd: Period. Appointments may include events not to exceed...

828 Commissioner Silverman: Ok, there it is, so the keyword is event.

829 Chair Hurd: Yes.

830 Commissioner Silverman: Ok, thank you.

831 Chair Hurd: All right. Moving to the vote. Commissioner Bradley.

832 Commissioner Bradley: I vote aye.

833 Chair Hurd: Commissioner Kadar.

834 Commissioner Kadar: I vote aye.

835 Chair Hurd: Commissioner Silverman.

836 Commissioner Silverman: I vote aye.

837 Chair Hurd: Commissioner Williamson.

838 Commissioner Williamson: Aye.

839 Chair Hurd: Commissioner Cloonan.

840 Commissioner Cloonan: Aye.

841 Chair Hurd: Commissioner Tauginas.

842 Commissioner Tauginas: Aye.

843 Chair Hurd: And I am aye as well, ok that one carries.

844 **Aye: Bradley, Kadar, Silverman, Williamson, Cloonan, Tauginas, Hurd**

845 **Nay: None**

846 **AMENDMENT TO THE MOTION PASSED**

847 Chair Hurd: Alright, so now returning to the original motion as amended. Any further discussion or

848 amendments to this motion? We had done with it. We ready to move? Ok, moving to the vote for

849 the motion. Commissioner Bradley.

850 Commissioner Bradley: I vote aye.

851 Chair Hurd: Commissioner Kadar.

852 Commissioner Kadar: I vote aye.

853 Chair Hurd: Commissioner Silverman.

854 Commissioner Silverman: I vote aye.

855 Chair Hurd: Commissioner Williamson.

856 Commissioner Williamson: I vote aye with a note to the City Council to consider amending Chapter

857 13 regarding background checks.

858 Chair Hurd: Ok, thank you. Noted. Commissioner Cloonan.

859 Commissioner Cloonan: Aye.

860 Chair Hurd: Commissioner Tauginas.

861 Commissioner Tauginas: Aye.

862 Chair Hurd: And I am aye as well, motion carries.

863 **Aye: Bradley, Kadar, Silverman, Williamson, Cloonan, Tauginas, Hurd**

864 **Nay: None**

865 **MOTION PASSED**

866 Chair Hurd: That's it. And that ends the agenda item. Thank you, thank you, Sir.

867 **5. Informational Items**

868 Chair Hurd: All right. It takes us to item 5, informational items, first up is the Director's report.

869 Director Bensley: I think this may be the earliest we've gotten to a Director's report on the agenda,
870 it's exciting, I actually had to have it written in advance and everything. All right. So, since our last
871 meeting, projects that went to and are going to Council – November 11th, we had the first reading for
872 339, 341 and 349 East Main Street's Comp Plan amendment and rezoning. While it was originally
873 going to be scheduled on the December 9th agenda for second reading, due to some issues for the
874 applicant availability, that second reading is going to be on January 27th now. So that will be moving
875 forward at that point. November 18th, we had the first reading for Chapters 27 and 32 development
876 fee amendments which came to you guys in October, and we had the budget hearing, first budget
877 hearing for the 2025 operating and the 2025 to 2029 capital budget, which you previously
878 considered at your October 15th meeting. Both were adopted by Council that evening, so we have a
879 budget. Yay. Council meeting for November 25th, that one was an all Planning, all the time, kind of
880 agenda. So we had the second reading for the 711 Barksdale Road Comp Plan amendment and
881 their major subdivision with site plan approval. That was the Sutton Place project where they
882 subdivided the existing development into 12 fee simple lots, and that was approved by Council 7-0.
883 They did, as part of that, have a study done as requested by the Planning Commission as to what
884 the developer would need to pay up front to account for the 16 years that the development had
885 been there as far as future maintenance costs and things of that nature. And that was committed
886 to as part of the approval.

887 Commissioner Bradley: Do you happen to know what the number was by chance?

888 Director Bensley: It was just under \$115,000.

889 Commissioner Bradley: That's not bad.

890 Director Bensley: So they basically went through every asset, determined the life of the asset,
891 determined what the projected cost of it would be for replacement, how much time was left for the
892 owners to put in funds, and you know, down to what they expected the money market account to
893 accrue in, in gains, so you know it was very detailed, but they did come up with that number and it
894 was agreed to and approved. The 1110 South College Avenue was also reconsidered that night, the
895 automatic car wash's Special Use Permit that had previously been rejected was approved. And so,
896 the minor subdivision was approved as submitted as opposed to the amended version that had
897 been previously done, so that is done as well. Also, that evening we had two Special Use Permits.
898 One was the 800 Ogletown Road retail marijuana Special Use Permit for Fresh Delaware and that
899 you all had at your November Planning Commission meeting, so that was approved by Council and
900 then a restaurant with alcohol Special Use Permit was approved for unit 203 in the Newark
901 Shopping Center for the new Casa Kahlo restaurant that is going to be opening shortly.

902 Looking forward, December 9th is the last Council agenda for the year. I have lots of items on that
903 agenda, but the only one related to land use is our second reading for the Chapter 27 and 32
904 development fee amendments, a lot of that meeting is going to be devoted to the revenue, or the
905 revenue ordinances that support the new budget that was passed, so increases in various fees and
906 utility rates and things of that nature as well as the kind of reconciling the books for all of the final
907 ARPA expenses since that money all has to be encumbered by December 31st in order to avoid
908 having to give it back.

909 Other items moving forward, the January 7th Planning Commission meeting, we've got a couple of
910 items that are gonna be on there. The 300 East Main Street which is the NewArk United Church of
911 Christ. Their Comp Plan amendment and rezoning will be on that evening's meeting. We're also
912 looking at having 261 and 263 South Chapel Street, which is a minor subdivision to divide two single
913 family lots into three single family lots to build another single-family house, so that one should be
914 fairly straightforward as well. We may also be bringing a housekeeping Comp Plan amendment for
915 53 West Delaware Avenue. It is a former university owned property that is, has been purchased by
916 the Kristol Center, so they are designated as a university property in the Comp Plan. Since they are
917 not a university property anymore, they cannot be a university property in the Comp Plan. So, we're
918 looking to get that particular parcel updated to match the Comp Plan amendment to their two
919 adjacent parcels.

920 Commissioner Bradley: What is Kristol?

921 Director Bensley: It's the Jewish Community Center for students, yeah. So that is, they are doing
922 that in advance of, they're looking to, on those 3 parcels, they are planning to eventually build a new
923 a new center there, which would not rise to the level of being a subdivision so it's not something

924 that would come through Planning Commission and Council, but we've got some clean up things
925 that they need to do as far as getting their Comp Plan amendments consistent and, or their Comp
926 Plan designation consistent and consolidating the properties with an administrative subdivision
927 before they can submit their plan to move forward.

928 Our affordable housing workshops have been completed, so we are currently working to summarize
929 the data that's been gathered and look at potential next steps that's going to be brought to you guys
930 on your February 4th agenda. We're looking to leave that meeting agenda open to breathe because
931 I'm sure it's going to generate a lot of discussion from all of you. So, just saying. So, I already
932 mentioned Will's award that he's getting tomorrow, we're all very excited about that. And then
933 thanks to everybody who forwarded questions and provided topics for new business in advance so
934 we could be prepared to respond.

935 Commissioner Bradley: Director, a quick question on the Dash In and Wawa across the street. Do
936 you know how soon they're gonna start construction on any of those projects? Approximately?

937 Director Bensley: They're both in the lines and grades process right now. So, it's gonna depend on
938 when that gets approved and neither have submitted for building permits yet, so...

939 Chair Hurd: All right, Deputy Director Velazquez.

940 Deputy Director Ramos-Velazquez: The department has received an additional submittal for 515
941 Capitol Trail, 261-263 South Chapel Street, as well as the 300 East Main that was just discussed.
942 We've also received our second submission for 124 East Main and a prior to Council submittal for
943 65 South Chapel. We've sent one SAC letter out for 55 West Cleveland, and that's all I have.

944 Chair Hurd: Ok, thank you that closes informational items.

945 **6. New Business**

946 Chair Hurd: That takes us to new business, introduction of new items for discussion by cCity staff
947 for Planning Commissioners, and items that need public notice will be added to a future agenda.
948 Commissioner Williamson had emailed that he had a topic I wish to bring up, and so I will start with
949 him.

950 Commissioner Williamson: Thank you, Mr. Chair and staff. So, I just want to see if there's
951 Commission interests to agendize on a future calendar at the director's discretion, the following. In
952 November, we voted five to two, I think, to deny the apartment building just down the street you all
953 recall that and so I bring this up because it many things were said at the hearing and they're all in
954 the minutes and I think most of us had several reasons why we thought the building and the project
955 was not satisfactory, however, it complied with the zoning code and I have a couple, two sayings I'll
956 share with you. One is development is sometimes like water; it follows the path of least resistance.
957 That's number one. And then number two from the city's point of view, be careful what you zone for
958 because you get it. And well, actually there's a third one. Codes are minimum standards, right? A
959 building code does not get you a fabulous kitchen, it gets you a kitchen that functions, or that, you
960 get the idea.

961 So, we have a code and I'm not disparaging it, I know it's been amended several times for different
962 reasons. The type of building that was proposed, of course, has been proposed in other locations
963 and approved. There are buildings like that around town I think we're all pleased with and
964 personally, I find the Lang Development buildings generally very nice to look at and well done, so it's
965 not impossible to have a good building with our zoning code. But it is possible to get kind of the
966 lowest effort. And my reason for bringing this up is. Is any of the Commission (inaudible)
967 Commission is singular...interested in having a discussion about what issues led you to vote for or
968 against the project. Are those issues, essentially part of the code they probably are, and third,
969 should we even, awareness now that the code is sort of allowing this type of a building, should we
970 consider even suggest some tweaking of the code to raise the bar for example, and get a slightly
971 better minimum code building and what? And what would that be? I don't know.

972 Chair Hurd: So, a clarifying question then, because there are several aspects of the code that come
973 into play, we have design guidelines, which are in the code which are problematic to having the
974 code, but we discussed that when we did the amendments to the BB and RA zoning. Then there's
975 the BB zoning code itself which I know Director Bensley will mention, but was the result of a long
976 effort with Council's direction to revise them because they were not pleased with the height of the

977 buildings that they were getting? So, I just, which area of it because obviously the design guidelines
978 are again a minimum standard that we haven't always seen people who just fit the minimum
979 because they're often coming for site plan approval because they have site issues. And so, when
980 they come for site plan approval, they put the effort into the design because that's one of the one of
981 the factors that we take into consideration. So, did you have an area you wanted to focus on in that
982 sort of in those areas?

983 Commissioner Williamson: Well, this would presumably come out of a discussion amongst the
984 Commission, so if it's if your reason for not approving that building was design guidelines oriented,
985 then we would know that if it was parking oriented, we would know that. And so, this is sort of a
986 suggestion to follow up on an action that we took, to figure out why we took it. And simply try to
987 chase down is there something in the code I don't know where...there could be a couple
988 opportunities that with a minor tweak could have made a difference. And it's a discussion. It may
989 not lead to anything other than a discussion. But I just wanted to not let that deny action kind of
990 just float away and it may come back again, and we may be facing the same thing over and over
991 again of code compliant buildings that we're not really happy with. Why...we shouldn't let that go on
992 indefinitely. That's my suggestion.

993 Commissioner Bradley: Can I offer a or ask maybe a scenario question to maybe kind of pinpoint
994 where you're getting at with this so. At least for me, I know that one of the things I wasn't happy with
995 about the plan with it was the five stories right straight up front instead of two, and then a three-step
996 back. Is that something that like, is that kind of what you're talking about with looking at the zoning
997 for that and see if that is something that can be incorporated into the regulations? Is that kind of
998 what you're talking about?

999 Commissioner Williamson: If that were, that were brought up by a Commissioner, there were
1000 several as one of the reasons they either did or considered voting against the project sure.

1001 Chair Hurd: Director Bensley, because I'm not looking at the code, Didn't we? Did that survive the
1002 amendments? The stepping back above 3 stories? Because I didn't know, if we didn't see that
1003 because the whole of the building was behind the setback...

1004 Director Bensley: I would have to look and see exactly where we landed on that one.

1005 Chair Hurd: Because I know we discussed it, we did discuss a tiered approach and that that comes
1006 into play often on buildings with existing parcel lines that are uptight to the sidewalk and then, so
1007 we'd say, ok, the first three stories, fine, you're in line with everybody else. And then beyond that,
1008 you have a minimum set back but if the whole front of the building's at the minimum set back, then
1009 you can go 5 stories straight up.

1010 Director Bensley: That sounds right.

1011 Chair Hurd: So, I don't remember from the report if it was in that vein. Yeah. So it would be that
1012 have to sort of, yeah then then the tweaks get interesting because now you're tweaking it sort of like
1013 wherever you put the front the no, the next everything about three stories has to be X distance. So
1014 yeah, I see what you're saying, ok. I think my comment just to sort of protect the department that
1015 this would have to be an agenda item that was solely the Commissioners with no prepared reports
1016 or such. Just you know, we find space in an agenda if there's no. If there's, if there's generalized
1017 support for that conversation...

1018 Solicitor Bilodeau: I would, I would also recommend not having this discussion if you're going to be
1019 looking at that application until after this winds its way through Council and finishes there. You
1020 know because you're just creating more of a record that possibly could be used against the City. I
1021 would hold off till after the-

1022 Chair Hurd: Right and keep it as a more general discussion about projects. No, I will say. And I think
1023 Director Bensley checked on this, was this, how many projects have we seen since we updated the
1024 BB zoning code? I know there was a lot of people were holding their projects until the till we came
1025 to get that finalized and then the projects.... I know there was a rush. How many have we approved
1026 under the new zoning code?

1027 Commissioner Silverman: I think 30 South Chapel comes.

1028 Director Bensley: 30 South Chapel would have been one, 339, 341, and 349 East Main Street would
1029 have been one. Obviously 136 and 160 East Main-

1030 Chair Hurd: 141 East Main?

1031 Director Bensley: Main Street, 141 East Main was also resubmitted under the new code. I can't
1032 think of any others that have come forward to you guys

1033 Chair Hurd: So, four or five.

1034 Director Bensley: And we have more on the pipeline, but as far as what's gotten to you, all that right
1035 is about it.

1036 Chair Hurd: Ok, so there's, there are enough projects that we can be having a discussion around
1037 general projects have that have come through. I don't wanna have the first one come through and
1038 then be everyone like jumping on that one because we wanna give it a chance.

1039 Commissioner Tauginas: I have a quick...

1040 Chair Hurd: Yes, jump in and then...

1041 Commissioner Tauginas: Yeah, I think having a general discussion would be worthwhile because I
1042 felt that, you know, we don't have to particularly pick out any on any project. I think it just kind of
1043 opened up a thought that you know everyone in the Commission just didn't, did not seem on board
1044 with that to a degree. So, I think it would be worth narrowing down, you know, in general terms like
1045 what we would like to see more of, like Commissioner Cloonan potentially wants, like every time we
1046 get into this discussion, you know, we wanna see some more greenery. We wanna see, you know,
1047 natural, you know, you know where, what direction I'm headed in. You know, those types of things
1048 where maybe we can flush out some of the priorities of what the Commission would like to see
1049 going forward. In projects just in general.

1050 Director Bensley: I'd also add 313 East Main Street, the Housing Authority's project was under the
1051 new code.

1052 Chair Hurd: Ok.

1053 Commissioner Silverman: (inaudible)

1054 Chair Hurd: I don't remember...it did? Ok, so I think we can take away or send to the staff or ask
1055 that once this project, this particular project has completed its path through Council, that we that
1056 we find space on the agenda for discussion in general terms around the application of the BB
1057 zoning on the projects that have come through. Does that match what you're sort of looking at?

1058 Commissioner Williamson: Yeah, I think it's just wise for a group to revisit your previous decisions
1059 and evaluate what you're getting.

1060 Chair Hurd: Ok, in preparation for that, which is some distance away, but still I'm going to ask
1061 Commissioner Williamson, since he's sort of spearheading, to I would suggest at least running
1062 through the minutes for those various projects to sort of pull-out areas that would there was
1063 discussion or contention around just to see if that helps highlight areas of discussion. Just because
1064 it's hard for me to remember what I liked or didn't like about a building a year ago. But if someone
1065 can pull out of the minutes to go, a number of people talked about like for 141 East Main I know we
1066 talked about the walls coming all the way to the ground and not leaving the piers, the posts
1067 exposed. So, like little bits of like that, we can just sort of bullet, I think that would be useful for the
1068 discussion. Great. Anything else in new business that people wanted to float up? On their mind?

1069 Director Bensley: I'm sorry. Before we leave this topic.

1070 Chair Hurd: Yes.

1071 Director Bensley: We had originally scheduled the 2025 Planning Commission Work Plan to be on
1072 the December 9th agenda and I pulled that from that agenda because of the advance notice on this
1073 conversation tonight and I didn't know if this was something Planning Commission wanted to add to
1074 its Work Plan or if this is still in its infancy and you're not interested in doing that at this point in time.
1075 Because I will tell you that, if we get past the point where Planning Commission is interested in
1076 working with something on this, this will need to be part of the Council prioritization discussion as
1077 well. As previously referenced, a fairly intensive effort went into rewriting the BB District very
1078 recently, as well as rewriting the design guidelines, so we have a long list from Council of what to

1079 work on. So, in order to move this past the discussion stage we, it would need to be placed on our
1080 priority list by Council.

1081 Chair Hurd: Right.

1082 Director Bensley: I don't know if the vehicle you want to move that forward to them is the Work Plan
1083 or if it's something that you want to bring up during their prioritization discussion or how you want to
1084 move that forward or if it's too early to make a decision on that.

1085 Chair Hurd: I think it's too early to put on the Work Plan because we're not likely to have that
1086 conversation for two, three, so I don't know how many months until the particular project gets
1087 through Council and we want to have the work plan in place before then and I would, my sense of
1088 this would be we should have a discussion first to see where we are on it to see what out of that
1089 would be a work plan item. I don't think we even know what they would be so I, in my mind this
1090 would be a discussion in preparation for next year's work plan in terms of like work and effort and
1091 getting to prioritizations and such. Does that make sense?

1092 Director Bensley: Ok.

1093 Chair Hurd: So, I think the work plan that we discussed in such is what it is. I don't want, I don't say
1094 that we're going to make any changes to that based on this, because we haven't had this discussion
1095 really. We just had we want to have this discussion, discussion. But it's gonna take, it's gonna take
1096 some time for us to come to some sense of agreement, if any, before we can even give anything to
1097 the department or to Council in terms of guidance or direction.

1098 Director Bensley: Ok.

1099 Chair Hurd: Ok. Does that suit? Yes, Commissioner Silverman?

1100 Commissioner Silverman: I'm going to reference one of the projects that was brought before us
1101 tonight. One of our considerations. I found it interesting that Council got involved in the body art
1102 discussion before we even saw it or heard about it. We've talked about the notion of an exploratory
1103 sketch plan to provide an informal review by our group for things like these code changes or
1104 physical plans, and somehow the cart has gotten before the horse. Do we want to continue down
1105 the road of asking for the informal review by us first to bring out some of the issues that have been
1106 raised on the recent discussion here on South Main Street and Council getting into the planning
1107 business before they get into the planning business. Because Council made my deliberations, kind
1108 of interesting. In reading the Council discussion, it's like hearing testimony. I didn't know what to do
1109 with it, could I take that into consideration since it wasn't part of our proceedings? I pretended I
1110 didn't hear it, but it put me in a very awkward position.

1111 Director Bensley: So, I would say that first, I think a land development plan that has been submitted
1112 by an applicant versus an amendment to the code are two very different things as far as the
1113 consideration one is a policy decision, one is the application of policies that have already been
1114 adopted. What we have done, I would say what staff has done fairly universally over the last four to
1115 five years is, taken...I shouldn't say that...how can I put this? We experienced several, I won't say
1116 several...we experienced a lot of items where the finished product was brought to Council and they
1117 were not interested in the finished product as presented, and a lot of work gets rejected and a lot of
1118 things get redone, and a lot of time gets wasted over the last –

1119 Chair Hurd: Cell phone towers come to mind.

1120 Director Bensley: Yes. Over the last four to five years for many topics, not just ones that are under
1121 the Planning Commission's purview, but a lot of topics that come to them or that are going to come
1122 to them eventually for code amendments, there have been initial discussions on the floor to get the
1123 temperature of what they're looking to see so we can develop ordinances that are based on, that
1124 are one, what we think we can get four votes on, but two that we know what their concerns are
1125 ahead of time. So even if we don't necessarily put that in the final product, we are able to address
1126 them and we are able to address why we don't think they're good policy decisions before the code
1127 is actually developed and passed. Since Miss Lopez had come to Council with her request in open
1128 public comment, that is where the discussion came from, and Council asked for it to be placed on
1129 an agenda for discussion. That was done, and then it was, you know, the proposal before you this
1130 evening was developed, in this specific case.

1131 Regarding land use and development projects, I will be honest with you from the staff perspective.
1132 It's gonna depend on how it's applied, because if this turns into just a second hearing on every
1133 single project, I think I've expressed on the floor before, this Commission is gonna have to be willing
1134 to meet a lot more than once a month for two hours. If we're essentially doubling the amount of
1135 work, it takes to get through hearings, then that's a problem. From a staff capacity perspective, all
1136 of these other projects that everybody wants us to do, we have limited time and limited resources.
1137 And while I will follow whatever direction Council gives me; I am not interested in doubling the
1138 number of hearings it takes to get through the land development process.

1139 Now, if the discussion is more around, there should be an initial exploratory sketch plan and then
1140 more things are by right after that, or more things are administratively approved after that, then
1141 that's a different discussion.

1142 Commissioner Silverman: That's, that's where I was heading.

1143 Director Bensley: So, I will say what I have seen from Planning Commission and Council at this
1144 point is that you all tend to dig into more and want more information and more details than less.
1145 There's going to have to be a re-evaluation as to what both groups are willing to accept to be able to
1146 move things forward. Are we bringing the discussion back to more of the foundational land use
1147 decision piece of things rather than getting into where every drop of stormwater is going, where
1148 every utility line is being run, where every tree is being planted. That's not something that we can do
1149 in an exploratory process.

1150 My other concern is that we get an applicant in here, there are asks of the applicant, perhaps asks
1151 that are not in code. If we have a two-tiered approval system and somebody has asked for
1152 something that is not required by code, and it does not make it into the final version for whatever
1153 reason. If that is used as a justification to turn down the project, then that is also legally
1154 problematic because it is not in the code. I have a lot of concerns with there being a two-tiered
1155 approval process for land development.

1156 Commissioner Bradley: So, like when you're saying you're talking about sketch plan approval and
1157 then coming toward before us like they normally do?

1158 Director Bensley: Yes.

1159 Commissioner Bradley: So, they come for sketch plan approval, for comments and then come back
1160 after that again after a month or two, is that what you're talking about?

1161 Director Bensley: If the current process doesn't change and we're just adding this on to the
1162 process, yes, it would result in a two-tiered process.

1163 Chair Hurd: I think when I've thought of the exploratory or the preliminary, it's been for projects
1164 where there's known issues like the sites are weird it you know, it looks like they might need site
1165 plan approval. They're trying to get a judge which way we're leaning in terms of what things we're
1166 looking for? I think that the 136 and 160 South Main project, I wouldn't have seen it on an
1167 exploratory because it was it would have been by right once the zoning went through. And so, there
1168 wasn't any need to have a conversation beforehand to find where's the pathway through the
1169 conflicting you know, ok the zoning code says I have to do this, but I need to be able to do that for
1170 the, you know. So, I see it as a way to help guide the applicant so that they don't show up here and
1171 say here's what I'm proposing for site plan approval and have us go yeah, I don't want that, I don't
1172 like that. You know, it's a chance to kind of get that conversation in earlier. But that being a
1173 discretionary thing, if we start throwing out comments and conditions early that they end up not
1174 meeting, to Director Bensley's point, that becomes legally problematic if we go you didn't do the
1175 thing I wanted, it's like the thing you wanted, no one else wanted. And so now we're having, it's like, I
1176 want to make it easier, but I don't know that we can, I don't know that this will make it easier in in
1177 that way.

1178 Director Bensley: But I'd also note that every single project that I reference that came under the new
1179 code, none of them are site plan approval.

1180 Chair Hurd: Ok...wait really?

1181 Director Bensley: Yeah. So yes, they require discretionary asks as far as comp plan amendments,
1182 rezoning, and a parking waiver in the case of the of 349 East Main Street, but the plans themselves
1183 were by right.

1184 Commissioner Silverman: They were all code compliant.

1185 Director Bensley: So, this is what I'm talking about.

1186 Chair Hurd: Right, right. So, I never...I personally when I was thinking about, never thought that the
 1187 sort of the sort of the preliminary thing was for...a project that was gonna be a code compliant
 1188 project. There was no need for my end. It was for the projects where they show up, they're asking for
 1189 site plan approval, they're trying to try to judge if they are giving enough new greenery or if the
 1190 building's pretty enough for the setback changes, you know. It's like, you know, are we giving
 1191 enough? Because it's kind of a crap shoot when they get here, but I don't know that we can actually
 1192 make that easier.

1193 Commissioner Bradley: How does New Castle County do it?

1194 Chair Hurd: Well, they don't have discretionary site plan approval for one thing.

1195 Commissioner Bradley: Ok.

1196 Chair Hurd: So, we're unique in that, so I think you have, if you can't meet the code, you have to get
 1197 a variance. And that's a much more stringent bar to pass and that's why we have the ability to do
 1198 land use discretionary approvals without the criteria for a variance. Which is why I try to be very
 1199 clear and call it relief and not a variance because variances are a thing that we don't do. I did want
 1200 to add sort of to two of Commissioner Silverman's comments. I understand the department's
 1201 position on trying to make sure that the proposals that come to us are ones that Council will
 1202 accept. I have concerns about having that drive all the things, because then that means Council,
 1203 because Council sometimes doesn't come to agreement on things that we think are a good
 1204 planning decision, we could say ADUs for example, or others other such things. And because of
 1205 Council's stated opinion, we are locked out of having conversations or doing considerations of what
 1206 other people are doing for good planning practice. So, I am concerned that, I don't want that to be
 1207 the only way, but I do understand the department's perspective of putting in the work, for us to do
 1208 the review to do the amendments to prepare it, to bring it to Council and have them go, nah.

1209 Director Bensley: Well, I'll remind you that on ADUs, we did come to Planning Commission first and
 1210 you all fawned over it and then we went to Council, and they did not. So, you did get that.

1211 Chair Hurd: We did but, but and I mean –

1212 Director Bensley: And it's the same cycle with the retail marijuana stores, you know, we came to
 1213 you guys, we went to Council, came to you guys, we went to Council. So, you know it's...ultimately, I
 1214 don't want to waste time on doing things that are not going to be adopted, even if it is not at the rate
 1215 or the size of the increment that I would prefer. So, getting that feedback ahead of time, instead of
 1216 having to go back, redo the entire Planning Commission, the entire Council process multiple times
 1217 for ordinances is a...

1218 Commissioner Cloonan: Efficiency measure.

1219 Director Bensley: Yeah. Thank you.

1220 Chair Hurd: Yes, well, this is true. You do have a lot on your plate, so I, I'm just trying to understand.
 1221 I have a concern, I don't know that it's entirely been met yet, but I was concerned that Council's
 1222 now the gatekeeper in some ways for the work that we do.

1223 Director Bensley: I would say that Council is the gatekeeper for the work that staff does.

1224 Chair Hurd: Ok.

1225 Director Bensley: If Planning Commission decides to take on things on their own and work on them,
 1226 then that is Planning Commission's purview.

1227 Chair Hurd: We have, we have established, yes, we haven't done that yet, but...

1228 Commissioner Williamson: Mr. Chair, yes, some jurisdictions have a process called prescreening.
 1229 It's optional for sites or projects that will require some kind of discretionary and the applicants or
 1230 even at staff suggestion said you should just go to the Planning Commissioners every three months
 1231 they have a study session, no action, and they'll just look at your plans and give you comments on
 1232 their time, you know, and take them or leave them but you'll get a sense of what at least some of the

1233 Planning Commissioners would react to your initial concepts, and that’s all it is. And that’s it. It's
1234 completely optional, not required, and it might help the process. That's one idea anyway.

1235 Chair Hurd: Yeah.

1236 Commissioner Silverman: The Delaware courts have kind of taken that away from us, I can't
1237 remember the name of the case, but if there's a doubt, it goes to the developer. If there's a grey
1238 area, it goes to the developer. If the code's unclear, it goes to the developer. Walton would be a
1239 good source for that.

1240 Chair Hurd: Yeah, absolutely.

1241 Director Bensley: I'd also offer that I think right now, Planning Commission and Council have very
1242 different perspectives on some things. And I'll just leave it at the development community has
1243 noticed that.

1244 Chair Hurd: Ok, alright, well good thoughts, and yeah, we'll see if any of this, some of this may
1245 come, well certainly Commissioner Williamson’s concern will come back in some of these others
1246 might, with some further discussion or work might come back up all right. Anything else further?

1247 **7. General Public Comment**

1248 Chair Hurd: All right, takes us to general public comment for items on the agenda but related to the
1249 work of the Planning Commission. Has anything been submitted online for general public
1250 comment?

1251 Ms. Dinsmore: No.

1252 Chair Hurd: Anyone present wishing to give public comment? Anyone online wishing to give public
1253 comment. All right, seeing none that item's closed and having reached the end of the agenda, we
1254 are in adjourned. We are adjourned, that’s the words.

1255 **The meeting was adjourned at 8:53 P.M.**

1256 Respectfully submitted,

1257

1258 Karl Kadar, Secretary
1259 As transcribed by Katelyn Dinsmore
1260 Planning and Development Department Administrative Professional I