

**CITY OF NEWARK  
DELAWARE**

**PLANNING COMMISSION  
MEETING**

**November 1, 2016**

**7:00 p.m.**

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

**Chairman:** Jeremy Firestone

**Commissioners Present:** Bob Cronin  
Willard Hurd  
Frank McIntosh  
Alan Silverman  
Robert Stozek

**Commissioners Absent:** District 3 (Vacant)

**Staff Present:** Maureen Feeney Roser, Planning and Development Director  
Mike Fortner, Development Manager  
Bruce Herron, City Solicitor

Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:10 p.m.

**1. CHAIR'S REMARKS.**

Mr. Firestone: I would like to call the meeting of the Planning Commission of November 1, 2016 to order. I want to start with just a couple of things. There are a couple of new things on the agenda and I want to go over that.

The first item, Chair's Remarks, will not be on there every month but I wanted to have it this time so I could make some opening remarks and explain, in part, the last item, the New Business item on the agenda. One of the goals of this year for us as a Commission is to develop more formal procedures. I'm someone who really believes in fairness, transparency, democracy and the importance of social trust of our government organizations, and having procedures, in my mind, will be a good thing and I hope it will also allow us to operate more efficiently and complete our business more timely, as well. So we're going to start off, as I said, by having this new item on the agenda each meeting called New Business. And this will comprise any item that a Commissioner may want to raise for future consideration. As such, there will be no action taken and no discussion on the item, but it will just be raised for possible addition to a subsequent month's agenda. As well, if any Commissioner wishes to distribute or share a document with other Commissioners, then that Commissioner should come to the meeting prepared to have some copies available for the public. I think the Commissioner could share with the rest of us, as documents are typically shared electronically. That way the public will have notice of any documents that come to us as Commissioners.

My view as far as all the Commissioners here is that the right of the Commissioners to speak is both sacred and limited. And by that I mean that none of us, myself included, should grandstand or go on ad nauseam on a topic. We should make our points and go on, but everyone should always feel free, all Commissioners, to make whatever points they would like, with the understanding that the Chair, of course, controls access to the floor and will try to follow set procedures on debate and action.

On development proposals what I'd like to see is that first the Planning Department will make a presentation. There will be some, potentially, but not necessarily, but there could be clarifying comments and questions from Commissioners seeking clarification. At that point we won't be expounding any opinions. The applicant will then be invited, and I would ask that we try to not duplicate information that the Planning Department has gone over, but bring new items to light or slightly different perspectives, and that we try to limit ourselves to 10 or 15 minutes. I'd like to have, and we haven't done this in the past, at that point we will have public comment so that everyone gets a say before the Commission starts discussing and debating the issues. Public comment should be directed to the Commission, not to the applicant. It should be comments. If you have questions, you can throw those out too, and then when we engage in discussion and potentially question the applicant, we may make take the lead of questions from the public and propound those questions on the applicant.

I think we also want to try to distinguish between neighbors that may be affected by a development proposal, but even there we'd like to try to have you confine yourself, as best you can, to three minutes and not be repetitive of comments already made. If we get a large group and we have a group of people who basically want to express the same sentiment, at some point, we may do a show of hands. As well, we're obviously interested in interested members of the public and on some proposals there could be non-residents who are impacted, as well. To a certain extent, a lot of those are more generalized views, and we would ask that those members who are not going to be directly affected, to really seek to confine your comments to three minutes because we mostly are going to be interested on the impacts of people in these development proposals. At the same time we certainly welcome all comments and all input, and there are certainly some interested members of the public who are quite engaged in Planning Commission matters and who have a long history and can enlighten us.

In the past on a few occasions we've had what I would refer to as developer testimonials, and I would just state that there's nothing in our rules that talk about qualifications of a developer as a relevant criterion. We're passing a development proposal . . . there are other contexts that I've been engaged in where the context of an applicant, the qualifications were really key and almost as important as the substance of the proposal. So if we get some developer testimonials, I think we're going to want to try and be quite brief on those. We'll then, as I said, have a discussion and vote.

So that mostly concludes my remarks. I have two things I just want to draw our attention to. One is that earlier this year we actually had the 100<sup>th</sup> anniversary of zoning in the United States. We didn't mark it but I think it happened some time, perhaps, in July. The City of New York is the first governmental entity to pass zoning and that was in 1916. It's also the 90<sup>th</sup> anniversary of what has become known as Euclidian zoning, based on the Supreme Court case of 1926, upholding the powers of municipalities such as the City of Newark to zone.

And last, I would be remiss if I didn't acknowledge our members of our Planning Department staff who swept the Halloween individual awards for costumes just yesterday. First, second and third place out of all of City government. So they both play hard and we know from our time here, they work hard.

## **2. THE MINUTES OF THE OCTOBER 4, 2016 PLANNING COMMISSION MEETING.**

Mr. Firestone: With that, we're going to move into the consideration of the minutes from the October 4, 2016 Planning Commission meeting. At this time, I would ask Commissioner Silverman if there's been any need for additions or changes to the minutes.

Mr. Alan Silverman: To my knowledge, there have been no additions or corrections to the minutes submitted to the Planning and Development Department Secretary.

Ms. Michelle Vispi: That's correct.

Mr. Firestone: Okay. Do we have a motion to approve the minutes of October 4, 2016?

Mr. Will Hurd: I so move.

Mr. Firestone: Is there a second?

Mr. Silverman: Second.

Mr. Firestone: Any discussion? Hearing none, all in favor of approving the minutes, say Aye. Opposed, say Nay. The minutes are approved.

MOTION BY HURD, SECONDED BY SILVERMAN, THAT THE MINUTES OF THE OCTOBER 4, 2016 PLANNING COMMISSION WORKSHOP BE APPROVED.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

**3. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN V AMENDMENT REGARDING MAP FOR PLANNING AREA 4.**

Mr. Firestone: That gets us, then, to Item 3 on the agenda, review and consideration of a Comprehensive Development Plan V amendment regarding the map for Planning Area 4, and I ask the Director of the Planning and Development Department to enlighten us.

Ms. Maureen Feeney Roser: Thank you, Chairman Firestone. I would like the group to know that I actually won first place in the Halloween contest. It's the first time I ever did it. I've been playing at this game for 30 years, and I finally won!

Okay, for the benefit of those in the audience, I will summarize the Planning and Development Department's report on this item, which we consider a housekeeping issue.

[Secretary's note: Ms. Feeney Roser proceeded to summarize the Planning and Development Department report on the proposed Comprehensive Development Plan V amendment regarding the map for Planning Area 4, which reads as follows:]

A recent review of the approved, but not yet certified, Comprehensive Development Plan V shows that the map associated with Planning Area 4 is not complete. Specifically, the map shows Ogletown Road as the southern boundary for the planning area and does not properly show annexable land adjacent to the roadway's southern boundary, which it should have. Attachment A shows Planning Area 4 as it currently appears in the Plan; and Attachment B shows the intended map, which includes the roadway and a CN-zoned parcel in New Castle County at the southeastern intersection of Ogletown and Marrows Roads.

The omitted map section, as well as considerable areas to the east (extending to Red Mill Road) were included in Comp Plan IV's Adjacent Planning Areas Section 8. See Attachment C. During our extended discussions regarding Comprehensive Development Plan V, it was determined that annexation along Ogletown Road to the east, beyond the Reybold property on the north side of the road and the FMC property on the south side of the road, was improbable. Therefore, Comp Plan V does not contemplate them in the annexation plan. However, no such discussions took place regarding properties along Ogletown Road to the west and therefore, the right of way and the parcel at Ogletown and Marrows Roads were intended for inclusion on the map for Planning Area 4 as appropriate for annexation with a commercial land use

designation. Unfortunately, the map cuts both the right of way and the parcel out, which is particularly problematic as the parcel omitted is now being considered for annexation. While the annexation can still be considered because Comp Plan V is not certified, the mapping error should be corrected prior to Council consideration.

### **RECOMMENDATION**

Because properties west of the Reybold and FMC properties along Ogletown Road were anticipated for inclusion in Planning Area 4 of the annexation plan section of the Comprehensive Development Plan V and are appropriate for commercial land uses; because Comprehensive Development Plan IV, which is still in effect, calls for commercial uses along this section; and because one of the goals of the annexation section of a Comprehensive Plan is to eliminate pockets of New Castle County within the City's boundaries, the Planning and Development Department suggests that the Commission recommend that City Council amend Comprehensive Development Plan V to add as annexable land appropriate for commercial uses, the area adjacent to the southern boundary of Ogletown Road.

[Secretary's note: The recommendation was modified based on the guidance of the City Solicitor between the time the report was distributed to the Commission and publicly posted on October 25, 2016 and the Planning Commission meeting on November 1, 2016. The recommendation documented above is the version that was read into the record at the November 1, 2016 Planning Commission meeting.]

Ms. Feeney Roser: That completes the report on this particular item and I would be happy to entertain any questions that the Commission may have for me.

Mr. Firestone: Are there any questions from the Commissioners? Yes, Commissioner Silverman.

Mr. Silverman: Maureen, this position of the City to eliminate these County inclusions is also represented in the State Planning Office, isn't it, with their annexation policy?

Ms. Feeney Roser: Yes.

Mr. Silverman: So it's both a State policy and a City policy?

Ms. Feeney Roser: Yes, sir.

Mr. Silverman: Thank you.

Mr. Firestone: Any other questions at this time for the Director? Is there any member of the public that wishes to speak on this issue? Is there any Commissioner that wishes to discuss or bring a motion forward?

Mr. Silverman: I move that we concur with the recommendation of the Planning Director with respect to the re-districting and re-boundarying of the annexation area, as reported.

Mr. Firestone: Is there a second?

Mr. Bob Stozek: Second.

Mr. Firestone: Any discussion? All those in favor, signify by saying Aye. Opposed, signify by saying Nay. The motion carries.

MOTION BY SILVERMAN, SECONDED BY STOZEK, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

**THAT CITY COUNCIL AMEND COMPREHENSIVE DEVELOPMENT PLAN V TO ADD AS ANNEXABLE LAND APPROPRIATE FOR COMMERCIAL USES, THE AREA ADJACENT TO THE SOUTHERN BOUNDARY OF OGLETOWN ROAD.**

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

- 4. REVIEW AND CONSIDERATION OF THE ANNEXATION, REZONING, MAJOR SUBDIVISION AND SPECIAL USE PERMIT FOR 1364 MARROWS ROAD AND 701 OGLETOWN ROAD TO DEMOLISH THE EXISTING BUILDINGS ON THE COMBINED PARCELS TO CONSTRUCT THREE NEW BUILDINGS WITH A GROSS FLOOR AREA OF 58,248 SQUARE FEET FOR AN AUTO REPAIR AND SERVICE CENTER FOR MARTIN HONDA, KIA AND MAZDA DEALERSHIPS.**

Mr. Firestone: On to Item 4, review and consideration of the annexation, rezoning, major subdivision and special use permit for 1364 Marrows Road and 701 Ogletown Road to demolish the existing buildings on the combined parcels to construct three new buildings with a gross floor area of 58,248 square feet for an auto repair and service center for Martin Honda, Kia and Mazda dealerships. Please go ahead.

Ms. Feeney Roser: Thank you, Chairman Firestone.

[Secretary's note: Ms. Feeney Roser proceeded to summarize the Planning and Development Department report on the proposed annexation, rezoning, major subdivision and special use permit plan for Martin Honda, Kia and Mazda dealerships, which reads as follows:]

On January 7, 2016, the Planning and Development Department received an application from McBride and Ziegler, Inc. on behalf of 1364 Marrows Road, LLC for the annexation of the 0.628+/- acre property on the southeastern corner of the intersection of Marrows and Ogletown Roads (701 Ogletown Road). The applicant also requests rezoning from CN (commercial neighborhood) zoning in New Castle County to BC (general business) City zoning, and subdivision approval to combine the parcel with the adjacent property to the south at 1364 Marrows Road, which is also zoned BC in the City. In addition, development approvals are requested to demolish all existing buildings on the combined parcels to construct three new buildings for auto repair and service centers for Martin's Honda, Kia and Mazda dealerships. Each building is intended to include first floor service space and partial second floor office/sales space. A three (3) story parking structure south of the eastern most building is also proposed. A special use permit for an automobile repair and service center use at the site is also requested to accommodate the proposed development.

Please see the attached McBride & Ziegler, Inc. annexation, rezoning, major subdivision and special use permit plan with building elevation drawings, and associated materials.

The Planning and Development Department report concerning 1364 Marrows and 701 Ogletown Roads follows:

**Property Description and Related Data**

1. Location:

The property is located on the southeastern corner of the intersection of Marrows and Ogletown Roads.

2. Size:

The property is 4.397 acres, which includes 0.157+/- acres which will be dedicated to the State for right-of-way, and will result in a 4.24+/- acre parcel.

3. Existing Land Use:

701 Ogletown Road is the location of a former Shell gas station. The station building has been demolished and the underground tanks removed. Martin Honda is currently parking vehicles on the properties at 701 Ogletown Road and 1364 Marrows Road. Service garage facilities are also located on the 1364 Marrows Road parcel. The 1364 Marrows Road parcel was approved for an auto dealership repair facility through an annexation, rezoning and subdivision plan dated December 1, 2007, which was not built. The subdivision has since sunset.

4. Physical Condition of the Site:

1364 Marrows Road currently houses two fairly substantial buildings: one a 4,900+/- square foot footprint one-story block garage with office space, and the second building is a one-story open garage at 8,798+/- square feet. Two smaller buildings are also located on the site at the eastern boundary. One is a one-story block garage and the other is a one-story frame workshop. These buildings are secured behind chain link electrified fences. Aside from the commercial buildings on the 1364 Marrows Road property and paving areas on both properties, the remainder of the site is grass, concrete and gravel with some debris which appears to be from the gas station demolition. The property is relatively flat but slopes toward Ogletown Road on the north and Marrows Road on the west. Currently, the 1364 property is accessed from Marrows Road on the west and Ogletown Road on the northeast; and the 701 Ogletown property may be accessed at two locations from Ogletown Road.

Regarding soils, according to the subdivision plan and the United States Department of Agricultural Natural Resources Conservation Service (NRCS), the site consists of Elsinboro-Delanco-Urban (ErB) land complex soil, with 0-8% slopes. No development limitations for the proposed use are indicated for this soil.

5. Planning and Zoning:

The 701 Ogletown Road property is currently zoned CN (commercial neighborhood) in New Castle County, which permits commercial uses of a suburban nature to serve primarily nearby residential neighborhoods.

The applicant is requesting BC zoning (general business) for the 701 Ogletown Parcel to match the existing zoning of the 1364 Marrows Road property. BC is a commercial zone, which permits the following:

- A. Auction.
- B. Automobile, boat, bus, truck, mobile dwelling unit, motor bike, utility trailer rentals, retail, and wholesale sales, subject to special requirements.
- C. Crating service.
- D. Frozen food locker.
- E. Ice manufacture.
- F. Sign painting and manufacture.
- G. Warehousing, except that no highly combustible or explosive products or materials, which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions; products or materials which involve highly corrosive or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or

corrosive gases, shall be stored within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes and except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes.

- H. Wholesale sales with related storage and warehousing, except that no highly combustible or explosive products or materials which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions; products or materials which involve highly corrosive or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or corrosive gases, shall be stored within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes, and except that no semitrailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of any adjoining residential district or lot developed for residential purposes.
- I. Photo developing and finishing.
- J. Veterinary hospital.
- K. Cleaning and dyeing plants.
- L. Commercial laundries/dry cleaners.
- M. Laundromats.
- N. Outdoor commercial recreational facilities, such as miniature golf, archery ranges, skateboard centers, and other similar recreational enterprises, but excluding all forms of motorized vehicle amusements such as go-carts or motorbikes. Permitted commercial recreational facilities are subject to special requirements.
- O. Swimming club, private or commercial.
- P. Social club, fraternal, social service, union, and civic organizations, except on ground floor locations.
- Q. Studio for artists, designers, photographers, musicians, and sculptors.
- R. Offices for professional services and administrative activities.
- S. Personal service establishments.
- T. Finance institutions, banks, loan companies.
- U. Retail and specialty stores.
- V. Repair and servicing, indoor and off-site, of any article for sale which is permitted in this district. A 20-foot setback is required for this with no vehicular parking permitted in the required front yard area.
- W. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district.
- X. Accessory buildings or structures, no impact, and accessory uses, no impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes.
- Y. Restaurants, bakery-restaurants, and delicatessens.
- Z. Public parking garage and parking lot.
- AA. Parking, off-street.
- BB. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; stations and depots.
- CC. Street, right-of-way.
- DD. Utility transmission and distribution lines.
- EE. Water tower, water reservoir, water storage tank, pumping station, and sewer.
- FF. Retail food stores up to 5,000 square feet in maximum floor area, limited to bakeries, confectionery, candy, gourmet shops, small convenience grocery, and meat sales facilities. Goods produced on the premises shall be sold only on the premises.

BC zoning also permits, with a Council-granted special use permit, the following:

- A. Automobile repair and/or service station, paint and/or body shop, subject to special requirements.
- B. Self-service car wash establishment, subject to special requirements.

- C. Automobile/motor vehicle repair, subject to special requirements.
- D. Automatic car wash establishment, subject to special requirements.
- E. Used car lots.
- F. Retail food stores.
- G. Fast-food and cafeteria style restaurants, subject to special requirements.
- H. Drive-in restaurants, subject to special requirements.
- I. Drive-in and curbside service, for other than eating establishments, with a minimum setback from all street lines of 65 feet.
- J. Substation, electric, gas, and telephone central office, subject to special requirements.
- K. Tower, broadcasting and telecommunications, subject to special requirements.
- L. Police and fire stations.
- M. Library, museum, and art gallery.
- N. Church, or other place of worship, seminary or convent, parish house, or Sunday school building.
- O. Instructional, business, or trade schools.
- P. Motels and hotels.
- Q. Commercial indoor recreation and indoor theaters.
- R. Adult bookstore/adult entertainment center, subject to special requirements.
- S. Restaurants, with alcoholic beverages, subject to special requirements.
- T. Accessory buildings or structures, with impact, and accessory uses, with impact, except that no semi-trailers or similar vehicles for the storage of property shall be permitted within 100 feet of the property line of the adjoining residential district or lot developed for residential purposes.
- U. Indoor theaters, with alcoholic beverages, subject to special requirements and requirements of the Delaware Code.

A summary of the area regulations in BC district is provided below. With some exceptions, area requirements are as follows:

- (1) *Minimum lot area.* 5,000 square feet
- (2) *Lot coverage.* 100%
- (3) *Minimum lot width.* 50 feet
- (4) *Height of buildings.* Max three stories or 35 feet
- (5) *Building setback lines.* None
- (6) *Rear yards.* 10 feet
- (7) *Side yards.* None
- (8) (a) *Minimum distance between buildings.* 50 feet
- (b) *Minimum distance between access driveway and residence.* 50 feet

Regarding zoning area requirements, please be advised that the Martin Honda annexation, rezoning, major subdivision and special use permit plan meets or can meet all BC area requirements.

In terms of comprehensive planning, the Comprehensive Development Plan IV's adjacent areas section calls for commercial (auto-oriented) uses for the site. Commercial (auto-oriented) uses are defined in Plan IV as "shopping and commercial uses of all types . . . with customers, to a large extent, relying on the automobile to patronize the businesses." As the Commission knows, Comprehensive Development Plan V was approved by City Council on September 26, 2016, but the Plan does not become law until it is certified by the Governor. At the time that this report was prepared, the Governor had not yet signed Plan V. Therefore, the land use designations in Plan IV apply. Having said that, Comp Plan V also calls for commercial uses in the general planning area (4), but the map associated with it does not properly show annexable land south of Ogletown Road. Specifically, the map for Planning Area 4 cuts off at Ogletown Road, when, in fact, it should have included this annexable parcel, surrounded by City properties on the south side of the roadway. Therefore, the yet-to-be-certified Comp Plan V is proposed by the Department to be amended to include the omitted area with a land use designation of commercial, to reflect the other annexable parcels contained in that planning

area. Comp Plan V defines commercial uses as "... retail, restaurant, office, services, gas stations, and similar uses, excluding utilities and government facilities such as post offices and libraries and large manufacturing uses." The proposed automobile service center fits this description.

Regarding adjacent and nearby properties, to the east is the MI-zoned Armed Forces Reserve Center. To the south is a BC-zoned property containing a veterinary hospital. To the west, across Marrows Road, are BC-zoned properties containing the Wawa and Kentucky Fried Chicken businesses, and south and west of those properties is the BB-zoned College Square Shopping Center. To the north, across Ogletown Road are BC-zoned properties containing 84 Lumber and Porter Ford.

### **Status of Site Design**

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvements plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. If the construction improvements plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvements plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the 1364 Marrows Road and 701 Ogletown Road annexation, rezoning, major subdivision and special use permit plan calls for the annexation of a 0.628+/- acre commercially zoned New Castle County parcel at the southeastern corner of Ogletown and Marrows Roads, the rezoning of that parcel to BC (general business) in the City of Newark, and the combination of that parcel with the 3.769+/- acre BC-zoned property at 1364 Marrows Road. The plan also calls for the demolition of existing auto service facilities at the site and the construction of three separate auto repair and service center buildings containing first floor service garage and partial second floor office/sales space, and a three (3) level parking structure behind the eastern most building. The buildings are proposed for a total of 63,287+/- square feet of gross floor area, which includes the proposed stair towers. Access and egress are proposed to the site from Marrows and Ogletown Roads. The Marrows Road access is proposed to be full (rights and lefts in) with egress limited to rights out only. The Ogletown entrance/exit is proposed as rights in and out only. The plan shows a total of 359 parking stalls, which exceeds the required parking of 235 stalls by 124 parking spaces. Please note, from staff review, it appears that some of the support columns may impact the actual number of 9 x 18 spaces provided on the second and third levels, but in no way will the column placement impact the number of spaces such that it will become a Code compliance issue. The detail of parking space design is done during the CIP.

Please consult the application's landscape plan for landscape details, as well as the applicant's submitted building elevation drawings for additional information concerning the proposed buildings' design. As the location is outside the boundaries of the Downtown Newark Partnership, the Partnership's Design Committee did not review the proposed elevations. To evaluate the proposed architectural design, the Planning Commission may consult the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix XIV(d). In addition, please note that the landscape plan submitted shows a pipe and several parking spaces which are not in the same location as those on the annexation, rezoning, major subdivision and

special use permit plan. The applicant is aware that the landscape plan will need to be revised to match the annexation, rezoning, major subdivision and special use permit plan prior to Council consideration. Please note the required revisions to the landscape plan will not actually affect the landscaping.

### **Special Use Permit**

Please be advised that auto repair and servicing centers in BC zoning districts require a Council issued special use permit. Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided that the applicant demonstrates that the proposed use will not:

- a. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;
- b. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and
- c. Be in conflict with the purposes of the comprehensive development plan of the City.

In granting any special use permit, Council may designate such conditions in connections with it that will, in its opinion, assure that the use will conform to these requirements.

### **Fiscal Impact**

The Planning and Development Department has evaluated the impact of the proposed 1364 Marrows Road and 701 Ogletown Road annexation, rezoning, major subdivision and special use permit plan on Newark's municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the development's fiscal impact: that is, the total annual municipal revenues, less the cost of municipal services provided. The Planning and Development Department's estimate of net revenue from this project is \$13,523 annually. Please note that the current fiscal impact of this site is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the annexation and development is approved. In addition, please note that because the property is currently owned by the applicant, no transfer tax will be assessed and therefore, there is no resultant revenue difference between first and future years.

### **Traffic and Transportation**

Because of the size and location of the proposed auto service centers, and because Ogletown Road and Marrows Road are both State owned and maintained roadways, the Planning and Development Departments requested that DelDOT review the project, based on the Department's traffic impact requirements and the City's subdivision and development regulations. DelDOT's plan review and the results of their pre-submittal review meeting held with the applicant indicate that the project, as proposed, will increase traffic beyond what was generated by the service station by 1,382 vehicle trips per day, with 131 of them in the morning peak hour and 181 in the evening peak hour. With these volumes, the facility could warrant a Transportation Impact Study (TIS), but DelDOT suggests that it would be more beneficial to accept an area-wide study fee in lieu of the TIS, at the rate of \$10 per additional trip generated. Specifically, because the trip generations proposed falls within DelDOT's parameters for participation in the area-wide fee (500 – 2,000 daily trips) alternative, DelDOT determined the money would be better spent on determining transportation improvements for the overall area rather than to study this particular project's impact on adjacent intersections. Further, DelDOT indicates that the funds generated for

the area-wide study fee for this project can be pooled with other fees collected to plan for future traffic improvements in the general area. Based on review of the City's draft Comp Plan V, DelDOT indicates that the likely use of the area-wide study funds would be the Land Use and Transportation Study associated with creating the Transportation Improvement District(s) (TIDs) called for in Plan V.

DelDOT also indicated that the entrance locations are acceptable as proposed. Having said that, they would prefer a cross access easement be established with the veterinary hospital to the south to provide one combined access point on Marrows Road for both the veterinary hospital and the service center, but the Department recognizes that the current owner (of the veterinary hospital) refused to grant the easement. Therefore, DelDOT requested a note be added to the plan that says if the veterinary hospital property redevelops, a combined access will be built and a cross easement granted on the property. The note was added to the plan.

### **Subdivision Advisory Committee**

#### **Electric**

1. Electric service is available from Marrows Road.
2. The developer must make arrangements for Delmarva Power to remove all facilities to the to-be-demolished buildings and pay Delmarva Power any fees for the City to serve the site.
3. The developer must pay all costs to Delmarva Power, Verizon, City of Newark and Comcast for pole placement on Marrows Road to allow the City to serve the site.
4. The developer must pay all costs for onsite material, including transformers, cables and labor to supply electric service. Costs to be determined.

#### **Parks and Recreation**

1. The landscape plan is acceptable at this point in the subdivision review process. The Department may have additional comments through the CIP phase, if the project is approved.
2. As noted earlier in this report, the Department indicates the landscape plan has a couple of parking spaces and a pipe shown in incorrect locations, which will need to be revised to match the annexation, rezoning, major subdivision and special use permit plan before Council review. The revisions do not affect landscaping.

#### **Police**

1. The Police Department originally expressed concern about the ingress/egress to the property from Marrows and Ogletown Roads and urged for DelDOT's careful review. Subsequently, the project was submitted to DelDOT, and the Newark Police Department concurs with the DelDOT recommendations for the project.
2. The Department also provided information during the Subdivision Advisory Committee process regarding crime prevention elements, which can be incorporated into the design. These suggestions are not Code requirements, but simply good design standards, which were shared with the engineer.

#### **Planning and Development**

##### *Code Enforcement Division*

1. The Division's comments are based on the 2012 IBC. The proposed buildings must meet all applicable Building and Fire Code requirements. Complete architectural, structural, plumbing, HVAC, electrical and fire protection drawings will be required for review prior to permits.
2. The Division notes previously provided engineer comments that indicate the applicant will submit LEEDS standards as per 2012 IECC, as well as meet all Accessibility Standards (ANSI 117.1) during building permit review, which is acceptable. The annexation, rezoning, major subdivision and special use permit plan should, however, note the number of handicapped parking spaces being provided, which it does not. The number of handicapped spaces should be added to the plan prior to Council consideration.
3. Any plans and elevations submitted for Council consideration will need to match what is submitted for a building permit. The Division encourages the applicant to meet with staff to discuss any architectural issues.
4. Protection of site and public is required during construction. Both a pre-demolition and a pre-construction meeting will be required. If applicable, a Hazardous Materials Report will be required, and proper disposal of any hazardous materials will need to be done by an approved, registered contractor.

#### *Land Use*

1. The Department notes that the annexation will eliminate an island of New Castle County surrounded by City lands, which is a benefit of the plan.
2. The Department notes that the auto servicing use and requested enabling zoning is appropriate for the site considering nearby auto sales/services uses, as well as how the site was previously used (gas station/service station), and how it is currently used (car storage). The Department also notes that the use is compatible with the Comprehensive Development Plan IV's designation of commercial (auto oriented) land uses, which at the time of report preparation is still in force; and further, that the service center use is also compatible with the yet-to-be-certified Comp Plan V land use designations for the general planning area, and which can be expressly shown as such when the Planning Map for Area 4 is adjusted to show annexable lands south of Ogletown Road, as intended.
3. The Department notes that the use will increase traffic in an already congested area. The increase, however, is within DeIDOT permissible limits for an area-wide study contribution, which can be used for the Land Use and Transportation portion of the Comp Plan V recommended TID(s). The Department agrees with DeIDOT that an area-wide study fee which can be used to plan for transportation improvements in the overall area is of more benefit to the City than a TIS to study this particular development's impact on nearby intersections. In addition, the Department notes that the elimination of two of the three access/egresses on Ogletown Road is a benefit of the plan. Further, the Department notes that the applicant is willing to eliminate the Marrows Road access should the owner of the adjacent tax parcel (18-021.00-205) agree to a cross access agreement allowing for a full access entrance, which is aligned with the existing College Square access.
4. The Department also notes that the annexation, rezoning, major subdivision and special use permit plan will have a positive financial impact for the City, as well as significantly improve the aesthetics of the Ogletown Road entrance to the City. Further, the Department indicates the proposed automobile service center use will support and enhance the City of Newark automobile sales/servicing market niche.
5. The Department notes the plan provides 8 bicycle parking spaces, while Code calculations would require 40 bicycle parking spaces, and the applicant requests a waiver of the 32 spaces not provided from the Public Works and Water Resources Department as permitted

by Code Chapter 27, Appendix II, Section (c)(6) through the CIP process. The Planning and Development Department suggests that, considering the use as an automobile service center, the waiver of bike parking spaces may be appropriate, but defers to the Public Works and Water Resources Department on the matter. The Commission may wish to weigh in on the bicycle parking space requirements during the meeting, which the Department can consider in determining the required number of spaces at CIP.

6. The Department suggests that Planning Commission recommend that the subdivision provide for the following site design conditions:
  - The architectural design for the façade of the buildings should be carried out on all building elevations visible from public ways.
  - Storage areas, mechanical and utility hardware shall be screened from view from public ways and adjacent properties in a manner consistent with the proposed architectural design.

#### Public Works and Water Resources

1. The existing monitoring wells are still in use per DNREC-SIRS (DNREC's Site Investigation and Restoration Section) Final Plan of Remedial Action, which initially required four seasonal quarters of groundwater sampling and monitoring. We understand that a fourth round of sampling was performed by Duffield Associates in June, but the results have not yet been reviewed. Therefore, DNREC-SIRS may require additional remediation action and further testing which, if required, must be completed before the CIP is approved.
2. The plans indicate that the existing Suez Water hydrant on the site will be removed. Documentation that Suez Water has authorized the removal of the hydrant and associated main will be required by the City during the CIP phase.
3. A drainage agreement with the City will also be required and must be executed by the owner prior to CIP approvals. The agreement will identify the responsibilities of the owner related to the on-site Storm Water Management facilities and provide that the City can enter the site and inspect the facilities.

#### Recommendation

Because the proposed 1364 Marrows Road and 701 Ogletown Road annexation, rezoning, major subdivision and special use permit plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties; because the project conforms to the land use recommendations in Comprehensive Development Plan IV as well as the land use recommendations for the general area in the yet-to-be-certified Comp Plan V; because the proposed use conforms to the development pattern in the nearby area; because the project will eliminate a pocket of New Castle County in the City; and because the project will have a positive impact on Newark finances and improve the aesthetics of a gateway to Newark, the Planning and Development Department suggests that **the Planning Commission take the following actions:**

- A. **Recommend that City Council approve the annexation of the 0.628+/- acre parcel at 701 Ogletown Road with BC (general business) zoning as shown on Planning and Development Department Exhibit A (attached); and**
- B. **Recommend that City Council approve the major subdivision and special use permit, as shown on the McBride & Ziegler, Inc. plan dated December 5, 2015 with revisions through October 5, 2016, with the conditions in this report.**

Ms. Feeney Roser: That completes the long and rather tedious report. I apologize for that. I will be happy to answer any questions that the Commission may have for me.

Mr. Firestone: Is there any Commissioner with a clarifying question for the Director?

Mr. Hurd: I think I have just two. In the zoning for BC it talks about minimum distance between buildings is 50 feet, which doesn't look like the separation on the drawing. Do you know if there are variances?

Ms. Feeney Roser: Actually the problem is we were trying to summarize and consolidate what the Code says for the report, because sometimes the Code can go on and when we summarized it, we left out that the separation requirement is actually against residential. So it's a 50 foot separation to residential.

Mr. Hurd: So the minimum is between a BC-zoned and residential properties?

Ms. Feeney Roser: Yes and it should have said it in your summary. It actually is minimum distance between buildings and any residential district, and there are none in the area.

Mr. Hurd: Okay.

Ms. Feeney Roser: So I apologize for that.

Mr. Hurd: Second question and this one is sort of more general. When you were talking about traffic and TIDs, this is bounded by two State roads. Is the TID that we're envisioning, that will allow us to examine and make recommendations to both City and State roads?

Ms. Feeney Roser: Yes. It would be a joint planning effort with the State and we have not yet set the boundaries. At one point we didn't think we would extend this far, but we may want to.

Mr. Hurd: Okay. Thank you.

Mr. Firestone: Commissioner Silverman.

Mr. Silverman: By way of disclosure, I recently purchased an automobile from Martin Honda . . . we're required to do that . . . about a year ago, and I'm having the vehicle serviced there. However that will not influence my decision with respect to this particular application. One thing I did not hear in the Director's report was dealing with lighting and the light shine off the property. How is that being handled?

Ms. Feeney Roser: It's not in the report but I believe that the applicant can speak to that. And you may want to add as a condition of your recommendation that they make sure that the light does not shine on other properties.

Mr. Silverman: Okay and just one other comment. The Police Department has now taken an active role in dealing with crime prevention and I'm glad to see that it's a part of this application.

Ms. Feeney Roser: Thank you.

Mr. Firestone: Any other clarifying comments? Well I've got one, and this goes to the fiscal impact. I know that Martin Honda, Kia, Mazda has a service center on Cleveland Avenue. Because, in disclosure, I use that service center and so the question is, what's going to happen to the existing service center? Is this in addition or are we going to lose that and so the net fiscal impact may be significantly less than you project if there is a loss at the existing site? Do you know the answer to that?

Ms. Feeney Roser: No. I would ask the applicant to address it.

Mr. Firestone: Okay. Thank you. Any other clarifying questions at this time? Then I'd like to invite the applicant to illuminate on the various issues and the proposal for us and the public. Thank you.

[Secretary's note: During the course of the presentation, representatives for the applicant referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public.]

Mr. Shawn Tucker: Thank you, Chairman, and thank you, Board members. For the record, my name is Shawn Tucker. I represent the applicant this evening. And, Chairman, I will try to perhaps minimize down the PowerPoint a bit given your instructions at the beginning of the hearing because there certainly is some overlap, but I think it's minimal. At least I'll try to keep it minimal.

For the record, I think Ms. Roser's report was certainly thorough. She certainly hit on all the Code issues and legal issues, particularly the standards for special use, so I won't repeat those. Certainly I was disappointed, however, she did not wear her award-winning Halloween costume while she read the report, but maybe next year we can ask for that. But I thought it was very thorough and an important part of the record in terms of the legal standards, certainly.

Here with me this evening, just briefly, Hommy Poursaied is here from Martin Honda. Hopefully he's done a good job servicing your vehicles, I hope. I cross my fingers. Also our architects are here as well: Caitlin Kline and Marty Whalen. And from the civil engineering side, Mark Ziegler and Greg Swift are here with us this evening, to answer questions as may be necessary.

What we've shown on our first slide is the actual street view of the architecture and site as anticipated to be built as part of this application. I would submit that it's quite a handsome streetscape. The design is actually driven through the individual dealership franchise agreements. So there's a lot of work that goes into this design that is driven by the franchise agreement, right down to the signage. It's no mistake that the buildings are separated, by the way, as opposed to being combined. That is probably not so surprising but they don't want to all be under one roof as part of that different dealership hat.

The landscaping would be consistent with what you see in this proposal, as well. One note, 3.7 acres, give or take, of the site is already annexed in. I think Ms. Roser covered that but just to give you an idea of scale, 3.7 is in and, as Ms. Roser indicated, we've got just over a half-acre that's being added, which is the former SMO Southern Maryland Oil Shell gas station site. So this is a relatively smaller part of the parcel that's now being pulled into the City that had been in the County zoned CN. So the total site is 4.24 acres, but 3.7 was previously annexed in under a former plan.

Just by way of comparison, this is what the site looks like today, so I think you can appreciate the contrast of what we have versus what is being proposed by my client.

Chairman, regarding your question about the existing location, that building would remain. Right now it's planned to be used for storage of the vehicles, many of the ones that you see here. So there would be another location or overflow for storage of vehicles so that the building you see would still operate and you would see predominantly storage of vehicles happening here. Now that could change but there's no plans to demolish . . . I'm sorry . . .

Unidentified Speaker: [inaudible]

Mr. Tucker: My apologies. I misunderstood. My mistake. So the site will be used for storage of vehicles but the building would be demolished. So storage of vehicles but no more building. Thank you for correcting that. I apologize for the misunderstanding.

Regarding the site layout before you today and the square footage, the current plan proposes a total of 63,257 square feet. Again, that's on 4.2 acres. The proposed zoning is to BC, which is consistent with the zoning on the other acreage that had been annexed in several years ago.

The landscaping . . . what you see is what is being proposed. If you compare that to what you see on Cleveland Avenue today, you're hard-pressed to find trees along Cleveland Avenue. So it's a significant improvement in your Code regarding landscaping requirements and buffering.

We heard from Ms. Roser about the \$13,500 in additional revenue and just to be really clear on that, that struck me as a low number and then I came to understand that that's in addition . . . that's what left over after all the costs are paid for services rendered by the City. So this is the extra that would be left over after all the other obligations are paid for through the City's costs and budget. So that's in addition. Certainly my client would pay much more than that in tax and utilities each year.

In terms of safety, one of the issues that Ms. Roser mentioned, certainly, was the closing of various curb cuts. Because of the prior SMO station, there were some curb cuts right on top of the intersection practically. And so this exhibit was intended to just depict the location of the existing entrances to be deleted. They appear in red Xs, although the red is hard to see. And then the green would be the new entrances and there are, of course, two: one on Marrows Road and one on Ogletown Road. So that, from a safety standpoint, is certainly more desirable with those access points further away from the intersection than what had existed when the gasoline station was operating. This is just the idea of how those curb cuts looks that will be eliminated.

Stormwater is really . . . there's not much to be said about that today. There's a lot to be said about that tomorrow if this plan is approved and the annexation moves forward. And what I'd like to do, if I may, Chairman, is have Mr. Swift from McBride & Ziegler just give a thumbnail sketch of the stormwater management that would be installed under the current Code in this new plan.

Mr. Greg Swift: Good evening. I'll try to be brief. We prepared a preliminary stormwater management design for the site and with the plan, we comply with the State of Delaware. Sorry, with the plan, we comply with the State of Delaware stormwater management regulations that were approved in 2014. Our preliminary design was reviewed by the City and approved. And our plan calls for bio-retention to be provided along the perimeter of the site along Marrows Road and on the perimeter of the site along Ogletown Road in that green area that you see along both of those roads. In addition to that, we're also going to provide an underground stormwater management Storm Tech system near Ogletown Road.

Our design will manage, as required by the State, the 1 year storm, the 10 year and the 100 year storm for both quantity and quality. And the slide that you see here and the previous one are slides of bio-retention . . . I'm not certain if any of you are familiar with bio-retention . . . but they're sort of large rain gardens with special soil that we will provide. They'll be heavily landscaped. You see the landscape plan. That's landscaping that's provided in the bio-retention facility. And the soil that's provided in the bio-retention facility is sort of like a sponge. It dries out during dry period and then when it rains, it sort of soaks up the run-off and helps in managing the volume and the quality of run-off.

So the design, as I indicated . . . if you want to go back just a previous slide . . . that's what it looks like. You may see some of these around the City. They've been very popular. They've been around for about 15 years and that's sort of the standard design that we use in the State

of Delaware and certainly in the City of Newark. If you have any questions with regard to stormwater management, I can certainly answer them.

Mr. Tucker: Thank you. While I have Mr. Swift up here, I just wanted to touch briefly on this next slide. This is not the actual tank that was removed but it's . . .

Mr. Swift: At the corner of the intersection of Marrows Road and Ogletown Road, there was a gas station, which probably many of you know. And in that gas station they had two tanks. I believe one of them failed or didn't operate properly and they had to put another tank maybe 20 years ago or so. And they removed both of those large tanks about four years ago and they are doing some remediation work on the soil around it, which I think will be completed in the early part of 2017. But that's been removed and I think there may be some other issues . . . smaller tanks that they've removed as well.

Mr. Tucker: And so, in summary, if I may, Chairman, I would submit, respectfully, to the Planning Commission that aesthetically this project would be a significant improvement, certainly, over what we have today. The annexation into this additional parcel, which is just over a half-acre, I think will complete this assemblage in such a way that now Newark will have complete jurisdiction over the entire project and will therefore be squared off in terms of your municipal line with New Castle County.

Regarding the legal standard, again I think Ms. Roser hit all the key points. Certainly consistency with the Comp Plan is always one of the most important and I believe her report quite thoroughly explains that consistency both under the existing plan and the one that is still pending the Governor's signature.

And, lastly, I would note, simply, that the requirements for these various franchises are rigorous. And there are actually books, and I've brought a couple of them here tonight that my client has to actually comply with to obtain these franchises. So there really was a genuine amount of work and effort to bring these franchises here to this area in Newark, consistent with other franchises in the area, and we hope you like it, and we hope you recommend in favor of it. Thank you.

Mr. Firestone: Thank you for your brevity. I don't have anyone having signed up for this agenda item. Is there anyone in the audience who would like to speak on this proposal? Okay. Then I will turn it over to my fellow Commissioners for any questions they may have.

Mr. Stozek: Bob Stozek. Just for clarification, you stated this is going to be about 1,400 additional vehicle trips per day and 10% of those are in the morning peak hour. What are you defining as the morning peak hour?

Mr. Tucker: I will defer to Greg but I believe the AM peak is 8:00 to 9:00, is that correct? Or is it 7:00 to 9:00? That's a DelDOT standard, just so you know. So we get pigeon-holed into that. But what are the timeframes?

Mr. Swift: We determine the peak. It's between 7:00 and 9:00, but when you do traffic counts, you determine exactly when that is, and we use whatever that peak is. Different places it's sometimes 7:30 to 8:30, sometimes 7:00 to 8:00. It depends, but it's generally between 7:00 and 9:00 weekday. It's a weekday AM peak hour and weekday PM peak hour.

Mr. Stozek: What's the evening peak hour?

Mr. Swift: It's between say 4:30 and 6:30.

Mr. Stozek: From your experience on Cleveland Avenue, the rest of the traffic, is it fairly well distributed throughout the day or are there other peaks?

Mr. Swift: Generally speaking, the weekday AM peak hour and the weekday PM peak hour are significantly higher than at other times during the day. Now there may be, if there's certain uses that have a lot of traffic during the day, I'm not certain right now what they would be. But, generally speaking, it's much higher during the weekday AM peak hour than it is . . .

Mr. Stozek: So you don't see a surge at noon, when people are . . .

Mr. Swift: No. Generally when you count traffic all day, you'll see the peak jump in the morning and you'll see the peak jump at night during the week. On a weekend it's different, but on a weekday it's typically the highest.

Mr. Stozek: Okay. Thank you.

Mr. Firestone: Mr. Silverman.

Mr. Silverman: I compliment the applicant on the amount of pre-hearing work that was done, particularly in dealing with DeIDOT. That's extremely important here. I believe that Martin Honda provides a shuttle service for customers. Will that continue at this site?

Unidentified Speaker: Yes.

Mr. Silverman: So that could conceivably reduce automobile trips, where my wife didn't have to follow me in with another automobile. I could take the shuttle.

Mr. Tucker: And, for the record, that was a yes.

Mr. Silverman: Okay. Also, I brought up the question earlier about dealing with lighting, so it would be cut off so it would not shine on the road, particularly interfering with the intersection.

Mr. Tucker: Yes. Thank you, Mr. Silverman. I did not address that. So I did speak to my client in between and we will certainly work with Ms. Roser's department in terms of restricting light migration off-site. There's a couple of ways we can do that. It can be done with deflectors. It can be done with certain types of lighting. So we will make a good faith effort, certainly, to work with the department coming up with a lighting plan to minimize and/or eliminate off-site glare to the extent it would impact neighbors or the roadway in any way, adversely.

Mr. Silverman: Thank you. I'd like to go back to the department's discussion with respect to numbers of bicycles and bicycle parking provided on this site. Can you summarize that for me again?

Ms. Feeney Roser: The way the Code reads, we have a formula that determines how many bicycle parking spaces are necessary for a plan, but because . . . and you may remember the conversation when we recently increased those requirements that for some places like Home Depot, the question was raised how many people actually ride their bikes there . . . you know, is the requirement a reasonable one for a building that size? I think that an automobile servicing facility, while certainly some folks may bring a bicycle to ride away from it after they drop their car off, that there probably is not a need for 40 bicycle parking spaces. So the Code does allow the Public Works and Water Resources Department to waive that requirement for a more reasonable number.

Mr. Silverman: I would encourage them to waive that requirement, particularly considering access to that site. If my recollection is correct, there are no protected bicycle lanes or markings and given the 30,000+ automobile trips a day through that area, holding this dealership to a high standard of on-site bicycle parking, I think, is not reasonable.

Ms. Feeney Roser: Thank you.

Mr. Firestone: While we're on the topic of bicycle parking, I, for one, am one who takes my bike in my car to the dealership and bikes back to pick up by car, rather than relying on the vans. And, at present, I have to, sort of, make-do at the present location as far as being able to tie up my bike to signs because I haven't found any rack or any place otherwise to park my bike. I would agree there's probably not going to be a lot of us but there are some of us, and that also cuts down on the number of vehicle trips in and out. And I, for one, will probably still bike to the new location assuming that it gets built.

Mr. Silverman: And I have one other comment with respect to the double level parking, and the Director and I have discussed this. Will this particular facility be held to a 14 foot clearance on the first level?

Unidentified Speaker: Yes.

Mr. Tucker: According to our architect, yes.

Mr. Silverman: Okay, I would like to encourage the City Code Department to re-think that. Fourteen feet is extremely excessive. If you look at standard parking garage features, it's 8 feet or 9 feet of clearance. I believe that the City has used 14 feet in areas where service vehicles needed to go through the garage to access other parts of the site. I know from my experience in the fire service, fire engines do not go into parking buildings. It would be like driving a fire engine into Home Depot to put out the fire. It just isn't done. As the architects know, there are a lot of additional fire protection provisions in parking garages such as heavy duty sprinkler standpipe connections. So I think this might be an opportunity for the applicant and the City to re-think that 14 foot clearance requirement for first level, street level parking.

Mr. Tucker: Mr. Silverman, we'd be happy to work with the department in that regard and discuss that.

Mr. Stozek: Bob Stozek, again. I just had one comment of a future concern. Anybody leaving this facility who wants to go west into Newark or north to Kirkwood Highway has to exit out the southern exit from this area.

Mr. Tucker: So . . .

Mr. Stozek: So you can't go on Ogletown Road and make a left. You have to go out Marrows Road and head north to either go west into the City or north on Kirkwood Highway. Right now, with the occupancy of College Square, that's probably not a problem. In the future, if College Square becomes filled again, I could see a lot more traffic coming out of their parking area on this access road and the alignment of your exit road and their exit road, to me, is just a potential problem. Hopefully the DeIDOT study will look into that and come up with some recommendations. When there's a lot of traffic on Marrows Road, making that left-hand turn onto Marrows Road out of the Sears parking lot, and then you have to watch the traffic that's coming at a fairly high rate of speed up Marrows Road, that's going to be a problem. It's not a problem right now, but in the future it could be.

Mr. Tucker: Understood. Yes, Mr. Silverman?

Mr. Silverman: Mr. Chairman?

Mr. Firestone: Yes.

Mr. Silverman: It sounds like from the background material submitted, the applicant has made a good faith effort to attempt to deal with that problem and the adjoining property owner simply will not cooperate with a cross access agreement that would either square up that intersection, as you suggest, or even allow traffic, with that cross access agreement, to go over to, I believe it's Campbell Boulevard, and a traffic-controlled intersection.

Mr. Stozek: But they may never agree. It's just something to put in the books as a concern that DeIDOT needs to look at.

Mr. Tucker: And your Planning Director, I think, had a very good idea which we did incorporate into the plan, which was a note that says if and when they come in, and they could come into the County, for example, there is that note on the plan. And the County, of course, encourages interconnectivity. So I think we've done . . . when you have a neighbor who is not cooperating, I think we've taken the steps that we could take to set up that possibility. But that is an excellent comment and a concern shared by many.

Mr. Firestone: Given the increasing prevalence of 500 year storms and the general issues that the City often has with stormwater infiltration, do you think it's wise not to plan for something greater than a 100 year event?

Mr. Tucker: Stormwater design and stormwater management, let me ask Mr. Swift what we've designed to and how that intersects with the 500 year storm.

Mr. Swift: We've thoroughly looked at how the site drains and, just in general, about two acres of the site drains towards Ogletown Road, about an acre-and-a-half of the site drains towards Marrows Road, and about an acre drains towards the Army Reserve site. So most of the site drains to Ogletown Road and so we have . . . in pretty clear detail we can show you . . . we have a pretty clear path and a swale, you may know, down there that gets into a pipe system initially and then gets into a swale. And we always prefer when there are concerns with regard to capacity, a swale is always safer than a pipe. It easily has a lot more capacity than a pipe. When you have a pipe, sometimes it backs up and causes problems. So, for most cases, we do discharge to a pipe down Marrows Road but it all gets to a swale at some point and runs into a swale. The one on Ogletown Road we have most of our site discharge to, it runs into a swale and then along a railroad service road to I think it's the FMC building maybe, and so it just runs along the swale and then into the Cool Run tributary of the White Clay, and then into the White Clay. And so, in general, we believe this site has not as much worries as many in that we're mostly in swales and we're discharging into swales and into the White Clay and the Cool Run not very far from our site.

Mr. Tucker: I think the question, the finer point, was what storm did we design to?

Mr. Swift: We designed to the 100 year storm and our design attempts to manage the peak rates of run-off and volume of run-off. So we are going to infiltrate onto our site. So we're designed up to the 100 year. The 500 year storm . . . I know you mentioned that maybe there would be a concern about the 500 . . . the 500 year storm, at this point, we're not required to manage to, but I think even if we had a 500 year storm, is the point I was trying to make, on this site, I think it wouldn't be catastrophic.

Mr. Firestone: Okay. Did you want to add something?

Mr. Mark Ziegler: I just want to say one thing.

Mr. Firestone: Could you identify yourself, please?

Mr. Ziegler: Yes, my name is Mark Ziegler. I'm with McBride & Ziegler. I think the design has probably . . . we've gone beyond the 100 year storm, but we haven't had to design to the 500 year storm. But even if we did design to the 500 year storm, the problem is that the storm sewers and the highways are only designed to the 25 year storm. So regardless of whether or not we have the capacity for the 500 year storm, you're still going to have substantial flooding if you have a 500 year storm. In other words, I don't think that over-designing would accomplish much unless all the pipes were upgraded.

Mr. Firestone: I've got a question back to the Department Director, and this goes back to the fiscal impact. So given that they're going to demolish the building and use it as a parking lot, how does that impact the net fiscal impact of this project for the City?

Ms. Feeney Roser: I thought about that when Mr. Tucker was explaining what was going to happen there. Very little will impact the fiscal analysis. We don't have a wage tax, so that's not calculated into the transfer of the jobs. The site will still be used for the automobile storage for sales and servicing so there will still be lighting. There will still be those kinds of utility needs that are there now. There may be a little less water usage but then there may be more because they're washing vehicles there. I don't think that there's a change to what this site will bring onto net revenue based on the fact that they're still operating there. They're not just abandoning the site. They're going to repurpose it for other auto uses.

Mr. Firestone: Except that they're going to mostly use it to store vehicles versus actively engaging in a service business which they are, at times, presumably even high demand users.

Mr. Tucker: I would think, and I can't speak for Newark's process because I'm not familiar with it in terms of assessment, but in the County the building's square footage has some value, certainly, and that's part of the assessment. The use, I think, remains relatively the same in terms of how that's assessed. The value of the property, in other words, I don't think will change. I'd be surprised if the assessment changes. But the lack of the square footage may reduce the tax a bit.

Ms. Feeney Roser: For that site, while increasing it for the other.

Mr. Tucker: Yes, while increasing it for the other site. That's right. So there may be a little . . . I mean that's the way the County would do it. I'm not sure about the City. I'd be surprised, though, if there's any loss given the size of this facility. I mean if you compare the square footage that's being built, it's significantly more.

Mr. Firestone: You've come and proposed a reduction in the number of bicycle parking spaces and requested a special use permit and those seem reasonable. My question is whether the applicant has any willingness to consider solar on his roofs and some electric vehicle charging stations on its premises that would be generally accessible to the public. I'm not saying it has to be free charging or anything like that but that would have other kinds of attributes that also address not just the traffic impact of vehicles but the environmental impacts, as well.

Mr. Tucker: Chairman, I can say that I know there is a LEED requirement in your Code that we have to comply with, so that, I know, is there in terms of being green to some degree.

Mr. Firestone: In my experience, I haven't seen a lot of development proposals for solar despite the LEED requirement.

Mr. Tucker: Yes, I think it's one of the . . .

Mr. Firestone: I don't think, it doesn't, to me, drive people . . .

Mr. Tucker: I think it's one of the options. There are many ways to get there, but you're right, I don't know that that's, it's probably not the most popular because of the cost, I'm guessing. I can say that in terms of the infrastructure for electric vehicles, the anticipation of that being our future, that is contemplated by my client and is going to be part of the design. When that would go active, I don't think we know just yet. It depends on when each one of these franchisees starts producing those cars. But the infrastructure will be installed to handle charging. That I can tell you on short notice. I did not anticipate for that question but we did talk a little bit about that earlier tonight, about charging stations. So, is a charging station going to be put in when this is first built? I can't say that right now. I don't think my client can say

that. But the infrastructure to allow that to happen is going to be established on-site with wiring, etc.

Mr. Firestone: I mean, personally, I'd like to see it. We have a real chicken and the egg problem with electric vehicles. All of the auto companies have pretty impressive mandates to meet fuel economy by the mid-20s but right now we're in a situation where people don't want to buy electric vehicles because there's a dearth of publicly available charging stations and private entities don't want to put them in until there's electric vehicles. And so it seems that this is a good opportunity, with a brand new facility and a place that has a lot of vehicle traffic around it, to . . . you know, all these charging stations go into State and national databases for EV owners so that they can then find their way. I think it would be a pretty forward-looking thing for your client to put those in at the get-go.

Mr. Tucker: And based on that request, we certainly will examine that. We'll look at costs and what incentives may be there at the State level. Sometimes there are some tax incentives to do that, so we can explore that, if you'd like us to.

Mr. Firestone: I do believe there are some incentives at the State level.

Mr. Tucker: Okay.

Mr. Firestone: Thank you.

Mr. Tucker: Thank you, Chairman.

Mr. Firestone: Are there any other questions of the applicant?

Mr. McIntosh: I don't know if this for the applicant . . . notice how I'm bringing the microphone closer.

Ms. Feeney Roser: Very nice, Frank.

Mr. McIntosh: I don't normally do that. I was just thinking that when we were talking about the 1,400 cars a day and then somebody brought up the resurrection of College Square, if that ever happens. I do recall just a few months ago we were talking about a hotel which seems to have gone to sleep of some sort. I don't know what happened to the hotel. But we had a lot of serious concerns about the number of cars that that hotel would generate and their egress and entry to the facility, etc. And it just seems to me that this whole area of the City is changing hands. You used to have Avon down the street and so on. I know that's not part of the City but it is part of the potential problem that could be coming down the road and I don't know if we've . . . and this is not really towards you, I'm really talking to Maureen here . . . have we looked at that anymore? It just seems . . . let's say the hotel is now there . . . I don't know what happened to that, but let's just say it's there. Let's just say that somebody gets a grand idea about College Square and that becomes a thriving shopping area again. And then we have . . . I think your place will be minor by comparison with what that shopping area could do . . . but what you're going to wind up with if you have all that going, is going to be a lot of traffic that will be using not much space on the roadway. And that does concern me because even getting here tonight, going down Cleveland Avenue, was not as much fun as it could otherwise be. So we talk about infrastructure not being forward-thinking often, and so everything gets built and it's, oh geez, the road doesn't work anymore so what we are going to do. And a lot of times you can't do anything because of the way things are constructed. I'm just concerned. I'm not saying we shouldn't embrace what you've brought in front of us tonight. I don't think that has that much of an impact here, but it does concern me that this area of the City is getting developed for high traffic kinds of structures and businesses that are coming in that are simply not going to be able to handle it. They hardly handle it now. I don't know. What do you think there, Maureen?

Ms. Feeney Roser: Thank you, Frank. First of all, the hotel, while it doesn't appear anything is happening, they are finalizing plans with DeIDOT before submitting their CIPs to us. So I know that they had a Halloween store in there now. I don't know that they have any other plans to put anyone else in the space before the hotel gets underway. Part of what you're talking about with traffic generation and this area of the City is something that the Transportation Improvement District should be addressing. Part of the way they're designed is to take into account future and current land uses and the highest and best use of those lands so that transportation improvements can be planned in advance to try to address those in the future. So I think as we get further into that, those conversations with DeIDOT, we'll bring them in and we'll have a workshop where we'll talk about what the Transportation Improvement District, or Districts, should be for Newark and what kinds of information we'll have to have included so that we can make good choices.

Mr. McIntosh: Good, I just think . . . if we're talking about 500 year storms, I don't think I'll be here when it comes, but if I am, it'd be a heck of a storm, right? But this storm will come much faster, and this storm will have quite an impact in this area if we're not very, very careful about it.

Mr. Tucker: It's a point to County, and Mr. Silverman probably recalls this from his days at the County, it's a sensitive issue. It probably has been for a couple of decades. New Castle County struggles with this right now and the TIDs, personally, I think, are an advantage because they don't lock you into a specific level of service. So, for example, you may have a user that's going to bring a lot of jobs but if you followed your Code strictly, if that intersection has an extra five second or ten second delay, it could prevent you from approving a plan like that. Whereas if you go to TIDs, there's a lot more discretion to allow different projects depending on their peak hour . . . there's always going to be an AM and a PM peak . . . but depending on their peak hour, the pass-by trips and whether they're going to bring jobs, you're not locked in. We literally have projects in the County where there is a one second additional delay where you would need to do a fly-over and so the project is dead, but it would add one second of delay. And so you start asking yourselves, what are 50 jobs worth? Is that worth another one second of delay in my day and I think most people would say yes, I can wait an extra second to create 50 jobs for our community. But the TIDs, I applaud the City for working with DeIDOT because I think they provide that greater flexibility. And as long as they're funded and they're thought through . . . Route 40, for example, was part of a TID. They pre-designed certain improvements and as development came along they required people to pay, essentially, impact fees down that corridor to build what DeIDOT had already pre-determined needed to be built. And I think Route 40 actually works pretty well. If you actually drive on it in rush hour, you're not going to generally spend two cycles at any light. You're going to get through there, typically, in one cycle. So that's just my two cents, Mr. McIntosh, because that's an issue near and dear to my heart as a land use attorney, as well.

Mr. Firestone: Thank you.

Mr. McIntosh: Time is money. A second could matter. What if they were dying?

Mr. Tucker: I could introduce you to some people that would tell you that a second matters and it's a different view shed of the world.

Mr. Firestone: Are there any further questions or comments? The Chair will then entertain a motion.

Mr. Hurd: Okay, I'll step up. I move that the Planning Commission adopt the recommendations of the Planning Department, specifically regarding the annexation and rezoning, and the approval of the subdivision and the special use permit request.

Mr. Firestone: Is there a second?

Mr. McIntosh: Second.

Mr. Firestone: Any discussion? All those in favor, signify by saying Aye. Opposed? Motion carries.

Mr. Tucker: Thank you, Chairman. Thank you, Board members. Thank you, Ms. Roser.

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

**A. THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 0.628+/- ACRE PARCEL AT 701 OGLETOWN ROAD WITH BC (GENERAL BUSINESS) ZONING AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A DATED NOVEMBER 1, 2016; AND**

**B. THAT CITY COUNCIL APPROVE THE MAJOR SUBDIVISION AND SPECIAL USE PERMIT, AS SHOWN ON THE MCBRIDE & ZIEGLER, INC. PLAN DATED DECEMBER 5, 2015 WITH REVISIONS THROUGH OCTOBER 5, 2016, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS.**

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

**5. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AS THEY RELATE TO ALCOHOL PRODUCTION, SALES AND RELATED ACCESSORY USES.**

Mr. Firestone: We now move to review and consideration of amendments to the Zoning Code as they relate to alcohol production, sales and related accessory uses.

Ms. Feeney Roser: For this one you won't have to listen to me because Mike has a PowerPoint for you and he's going to go through the report that way.

Mr. Firestone: Is there anyone else who is going to want to speak on this issue?

Ms. Feeney Roser: We can go, can't we?

Mr. Firestone: You can go ahead.

Mr. Mike Fortner: Alright, do I have this thing close enough? Is it picking up?

Ms. Feeney Roser: I can hear you, Michael.

Mr. Fortner: You can hear me? Alright. The title of today's presentation is called Alcohol Production, Sales and Accessory Uses. What we're talking about is, essentially, micro-breweries, micro-wineries and micro-distilleries. We've been approached by potential business owners over the past year and even more. And when they come in, we talked about what's permitted in Newark. And what's permitted in Newark would be a type of brewery, but a brewery that is a secondary use or accessory use to a full service restaurant. We've had interest from business people that are interested in just opening a micro-brewery, micro-winery or micro-distillery, but specifically micro-breweries, but they do not want to have a full service restaurant. They talk about a model that is not in our Code where they would manufacture alcohol, then they would have a tasting room or a taproom where they would sell

beer for either consumption on-site, like a bar or taproom, and/or for consumption off-site. So having an alcohol store and it could even include things like some glasses and other types of accessory things like t-shirts with the brand. And that's not permitted under the City of Newark Zoning Code. Alcohol production like Iron Hill, you can have a brewery but it's in association or accessory to a full service restaurant. So these are people coming in who are not interested in restaurants but interested in having a brewery.

So we have this interest and we described the model and so because we've been getting this interest, the Planning and Development Department went to Council to seek direction. And Council gave us direction that we ought to look into amendments where we could amend our Zoning Code to permit some or all of this. They appear to be interested in this as an economic development tool. So this will give you a little bit of background. I'm going to go over current conditions, some of the research that the Planning and Development Department has done, some of the methodology of how we're proposing to change the Code and then our staff comments and recommendation.

[Secretary's note: During the course of his presentation, Mr. Fortner referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public, which summarized the Planning and Development Department report regarding amendments to the Zoning Code as they relate to alcohol production, sales and related accessory uses, which reads as follows:]

Over the somewhat recent past, the Planning and Development Department has received several requests from potential business owners to open micro-breweries in the City, with an assortment of accessory uses, which vary from one another based on their business plans. Specifically, the Department has been contacted about opening a production facility with a tasting room and distribution operations; and two micro-breweries with tasting rooms and beer gardens, one with and one without limited food service. None of these uses are permitted under the current Zoning Code. The Code does permit brew pubs with a special use permit in certain zoning districts, where the brewing is actually accessory to the permitted use of operating a full-scale restaurant (for example, Iron Hill Brewery), but it does not permit the production of alcohol as a primary use. Considering the volume of interest we've experienced, and the compelling statistics on the growing number of micro-breweries, micro-wineries and micro-distilleries nationwide, and the potential positive impact on local economic development permitting them may provide, the Department requested and received direction from Council to consider amending the Code to permit some or all of the desired uses as conditional uses in Newark. In other words, the Department received confirmation that Council would like us to consider amendments to the Zoning Code to permit the small scale production of beer, wine and spirits, along with associated alcohol sales in certain zoning districts, with a special use permit and specific conditions.

### **CURRENT CONDITIONS**

Currently, beyond Newark's specific restrictions, in Delaware, the production of beer, wine, and spirits and their delivery to the public is governed by State Code. The Delaware Office of Alcoholic Beverage Control Commissioner (D.A.B.C.C.) regulates "Farm Wineries", "Microbreweries", and "Craft Distilleries" under Delaware Code; Title 4 Alcoholic Liquors. Chapter 1: General Provisions provides the following definitions under Section 101:

"Distillery", "Winery", and "Brewery" means not only the premises whereon alcohol or spirits is distilled or rectified, wine is fermented or beer is brewed, but, in addition, the person owning, representing or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of alcoholic liquor in any form.

**“Manufacture”** means distill, rectify, ferment, brew, make, mix, concoct or process any substance or substances capable of producing a beverage containing more than one half of 1 percent of alcohol by volume and includes blending, bottling or other preparation for sale.

**“Manufacturer”** means any person engaged in the manufacture of any alcoholic liquor and among others includes a distiller, a rectifier, a wine maker, a brewer, and includes a bottler or one who prepares alcoholic liquor for sale.

**“Mead”** means an alcoholic beverage that is naturally fermented (not distilled or frozen) wherein the major source of fermentable sugars comes from honey.

**“Spirits, wine, and beer tasting”** means the consumption of spirits, wine, and beer for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine and beer sampled is not to exceed 1 ounce for wine and beer and ½ ounces for spirits.

**“Taproom”** means an establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

Under Title 4, Chapter 5. Licenses and Taxes; Subchapter II. Purchase, Sale and Dispensing provides the following regulations for “Farm Wineries”, “Microbreweries”, and “Craft Distilleries”:

**§ 512A Farm wineries.**

(a) Upon proper application and subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a farm winery to manufacture, ferment, blend, age, store and bottle wine, mead, and cider on the premises designated in the license. For purposes of this title, a "farm winery" is defined as an establishment at which the basic ingredients, including but not limited to the harvesting of grapes, to make wine are grown and where wine, mead, and cider are fermented or manufactured. Notwithstanding any provisions of this title to the contrary, a farm winery licensee shall be authorized to sell, deliver and ship such wine, mead, and cider in barrels, bottles or other closed containers to persons licensed under the provisions of this title to import wine, mead, and cider; and to sell and ship wine, mead, and cider to persons outside of the State in accordance with this title.

(b) A farm winery licensee shall also be authorized to store and sell wine, mead, and cider on the premises by the bottle or by the glass for consumption on or off the premises where sold.

(c) A farm winery licensee shall be exempt from the distance requirements for establishments licensed, or to be licensed, for consumption off the premises, as contained in § 543(d) of this title, and shall not affect the granting of a license of the same type.

(d) A farm winery licensee may sell, on the licensed premises, food items, souvenirs, wine-related supplies and educational material as approved by the Commissioner.

(e) The Commissioner may grant a tasting license to a farm winery licensee consistent with the provisions of §§ 525 and 554(ff) of this title.

(f) All wine, mead, and cider sold by a farm winery licensee shall be in a container which is securely sealed and has attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) A farm winery licensee may not engage in any business or activity in the licensed establishment unless authorized by this title or approved by the Commissioner.

(h) A farm winery licensee or a temporary licensee not to exceed 3 years shall be authorized to purchase and receive shipments of bottled, finished wine, mead, and cider from importers located within the State that are licensed in accordance with this title. Such purchases and shipments, if in bottled, finished form, must be manufactured specifically for the Delaware farm winery licensee and bear the private label of the Delaware farm winery licensee on each bottle, and, if being imported from without the State, shall be limited, as follows:

(1) During the first year of operation, no more than 10,000 gallons of the combination of wine, mead, and cider;

(2) During the second year of operation, no more than 7,500 gallons of the combination of wine, mead, and cider;

(3) During the third year of operation, no more than 5,000 gallons of the combination of wine, mead, and cider; and

(4) After 3 years of operation, no more than 25% of the total gallons of the combination of wine, mead, and cider manufactured within the State.

(5) Notwithstanding the importation limitations for bottled wine established in this paragraph, at such time when there is sufficient quantity, variety and quality of wine grapes grown in the State, then the Secretary of the Department of Agriculture may mandate that all licensed Delaware farm wineries must use at least 51% Delaware-grown fruit in their blend inventories. In the case of hardship due to crop loss, the Secretary of the Department of Agriculture may issue a special permit to import fruit, juice or other raw materials to compensate for such crop loss. Until such time as the Secretary of the Department of Agriculture makes such mandate, the licensee or a temporary licensee not to exceed 3 years shall be authorized to import grapes or grape juice from other locations within or outside of the State, pursuant to the rules and regulations of the Department of Agriculture, for the purpose of fermentation, blending, bottling and aging.

(6) A temporary farm winery license may be issued, for not more than 3 years, allowing the temporary licensee to operate according to paragraphs (h)(1), (2) and (3) of this section herein if all the licensing requirements have been met except for those required in § 543(g) of this title, which requires government permitting to manufacture or ferment wine, mead and cider at the location. The temporary licensee shall, however, have obtained all necessary government permitting to operate as a temporary licensee.

(i) A farm winery licensee shall be authorized to purchase and receive shipments of unfinished wine, mead, and cider in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A farm winery licensee shall be prohibited from owning or operating or being affiliated with any importer or retailer of alcoholic liquor either within or without this State. Notwithstanding the foregoing, it shall be permissible for a farm winery to apply to the Commissioner for a license, under § 512(g)(1) of this title, for use of a portion of the farm winery premises as a caterer.

(k) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(l) A Delaware winery or farm winery shall be permitted to sell wine, mead, and cider at times permitted pursuant to § 709 of this title.

(m) A farm winery licensee shall be authorized to export grapes, grape juice or unfinished wine grown in this State in bulk to persons outside the State for crushing, fermenting, bottling and labeling and shall be authorized to receive the finished product from that person, so long as no grapes, grape juice or wine, grown or manufactured outside the State, are added to the finished product.

(n) The provisions of § 506 of this title to the contrary notwithstanding, a farm winery licensee shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a brewery-pub, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State.

### **§ 512C Microbrewery.**

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a microbrewery to manufacture and sell beer, mead and cider.

(b) For purposes of this section, "microbrewery" shall mean a single establishment in which beer, mead or cider is manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a microbrewery license shall allow the licensee:

(1) To manufacture and sell on the licensed premises beer, mead or cider or a combination thereof, but the licensee shall not manufacture or sell more than the maximum amount permitted by federal regulations to qualify for a "reduced rate of tax for certain brewers" as currently found in the 27 C.F.R., Part 25, § 25.152(a)(2) or as hereafter amended;

(2) To manufacture on the licensed premises beer, mead or cider for persons, other than the licensee, licensed under this title or for persons outside this State;

(3) To sell beer, mead and cider manufactured on the licensed premises in labeled barrels, bottles or other closed containers to importers licensed under this title for delivery by them to persons inside or outside the State;

(4) To sell at the licensed premises beer, mead and cider manufactured on the licensed premises for consumption on or off the licensed premises. The amount of beer, mead and cider sold for off-premises consumption shall be limited to a maximum of 5 cases per day to each retail customer; and

(5) The provisions of § 506 of this title to the contrary notwithstanding, to be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, brewery-pub, and/or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed the maximum amount currently specified in 27 CFR Part 25, § 25.152(a)(2) or as hereafter amended.

(d) It shall be unlawful for a person to operate a microbrewery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) The licensee owns, operates or is affiliated with any importer of alcoholic liquor either in or without this State.

(e) A microbrewery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a microbrewery license.

(f) All beer, mead and cider sold by a microbrewery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any microbrewery or brewery licensed by the Commissioner to manufacture beer, mead, or cider in this State may provide samples of the beer, mead, or cider manufactured at said premises in a manner approved by the Commissioner.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at a licensee licensed under this section and at up to 2 brewery-pubs licensed pursuant to § 512B of this title all owned or controlled by the same person shall be permitted.

#### **§ 512E Craft distillery.**

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a craft distillery to manufacture and sell spirits.

(b) For purposes of this section, "craft distillery" shall mean a single establishment in which spirits are manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a craft distillery license shall allow the licensee:

(1) To manufacture on the licensed premises and sell not more than 750,000 proof gallons of distilled spirits in any calendar year;

(2) To manufacture spirits, on the licensed premises, for persons other than the licensee who are licensed under this title or for persons outside this State;

(3) To sell, deliver and ship such spirits in labeled barrels, bottles or other closed containers to persons licensed under the provisions of this title to import spirits; and to sell and ship spirits to persons outside of the State in accordance with this title;

(4) To store and sell spirits on the premises by the bottle or by the glass for consumption on or off the premises where sold; and to purchase alcoholic beverages from licensed Delaware importers or retailers to add to product manufactured by the craft distillery to sell to patrons for on premises consumption only. The amount of spirits sold for off-premises consumption shall be limited to a maximum of 1 case (i.e., not more than 12-750 ml bottles) per day to each retail customer for consumption off the premises; and

(5) To sell, on the licensed premises, food items, souvenirs, spirit-related supplies and educational material as approved by the Commissioner.

(d) It shall be unlawful for a person to operate a craft distillery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) It is owned, operated or affiliated with any importer of alcoholic liquor, either in or without this State; except that the holder of a craft distillery license may have an interest in, be affiliated with, operate, or own in common ownership a microbrewery, farm winery, and/or brewery-pub licensed under this chapter and actually located within this State.

(e) A craft distillery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a craft distillery license.

(f) All spirits sold by a craft distillery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any craft distillery licensed by the Commissioner to manufacture spirits in this State may provide tastings of the spirits at said premises pursuant to a spirits tasting license granted by the Commissioner pursuant to § 525 of this title.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licenses licensed under this section, § 512A, § 512B, or § 512C of this title all owned or controlled by the same person shall be permitted.

(i) A craft distillery licensee shall be authorized to purchase and receive shipments of unfinished neutral grain spirit in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A craft distillery licensee shall be authorized to export unfinished spirit manufactured in this State in bulk to persons within or outside the State for blending, aging, finishing, bottling or labeling and shall be authorized to receive the finished product from that person.

(k) A craft distillery shall be exempt from the prohibition of sales on Sundays as proscribed in § 709 of this title, but any sales on Sundays shall be limited to the hours during which the holders of licenses for the sale of spirits in a store may sell on Sundays pursuant to § 709 of this title. A craft distillery shall remain closed on Thanksgiving, Christmas and Easter.

(l) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(m) The provisions of § 506 of this title to the contrary notwithstanding, the holder of a craft distillery license shall be permitted to have an interest in, be affiliated with, or own another supplier or manufacturer, whether located inside or outside the State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed 750,000 proof gallons in any calendar year.

## **RESEARCH**

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

1. Zoning Practice; “*Microbreweries*”; American Planning Association; Issue Number 3, March 2014.
2. Delaware Office of Alcoholic Beverage Control Commissioner; State Statute, Title 4, Alcoholic Liquors.
3. Planning Advisory Service – “*Microbreweries*”; American Planning Association; April 2013.
4. Delaware News Journal; “*Delaware tapping into millennial set – State’s boom in beer, wine industry boosting tourism as it draws younger visitors*”; August 6, 2016.
5. Delaware News Journal; “*Rehoboth Beach: Draft law limits brew biz – Revised rules target standalone breweries*”; August 11, 2016.
6. The City of East Point, GA; Department of Planning & Community Development Newsletter – “*Welcome to Beer Country*”; Volume 8, Issue 11; May 2015.
7. Baltimore Sun; “*Burley Oak Founder Reflects on Five Years of Craft Beer and Helping Make Berlin Cool*”; August 24, 2016.
8. Cheatsheet.com; “*Why Craft Beers are Actually Good for the Economy*”; May 13, 2015.
9. University of New Hampshire Scholars’ Repository; Kevin LaPoint; “*Microbrewing in the US: An Overview of the Microbrewery Industry and a Business Plan for Future Success*”; Spring 2012.
10. The Denver Post; “*Economic Impact of Colorado Craft Breweries Growing, Study Finds*”; May 19, 2014.
11. Brewbound.com; “*Craft Beer’s Impact on the Local Economy Discussed*”; January 22, 2013.
12. Thonline/BizTimes; “*Study: Microbreweries Have Economic Impact*”; February 4, 2016.
13. Brewers Association; “*Brewers Association Economic Impact Study*”; August 20, 2015.

In addition, to prepare this report, the Planning and Development Department researched the Zoning Codes of 18 municipalities across the country, as well as some Delaware municipalities. Specifically, we reviewed the zoning ordinances of:

Asheville, NC	Evanston, IL	Port Townsend, WA
Aurora, CO	Fort Collins, Co	Saint Paul, MN
Bend, OR	Greenville, NY	San Antonio, TX
Boynton Beach, FL	Jupiter, FL	South San Francisco, CA
Dallas, TX	Newport News, VA	Smyrna, DE
Dover, DE	Novi, MI	Tequesta, FL

## **Methodology**

To permit craft breweries, craft wineries, and craft distilleries, as allowed under Delaware State Law, the Planning and Development Department suggests amendments to the Zoning Code, the first of which would be adding definitions for “Beer Garden”, “Craft Brewery”, “Craft Distillery”, “Taproom”, “Tasting Room”, and “Craft Winery” as follows:

### **Add Definitions**

Add to Section 32-4(a) the following:

- (10.1) **Beer Garden:** *An accessory use with impact to a craft brewery, craft winery or craft distillery which is an open air, roofed or unroofed area where the alcoholic beverages produced onsite are served or consumed and is operated by the licensee in accordance with State law.*
- (11.1) **Brewery, craft:** *A single establishment in which beer, mead and/or cider are manufactured, and is operated by the licensee in accordance with State Law.*

*(33.1) **Distillery, craft:** A single establishment in which spirits are manufactured, and is operated by the licensee in accordance with State Law.*

*(127.2) **Taproom:** An accessory use with impact to a craft brewery, winery, or distillery establishment as a place for the sale by the glass and for consumption on the premises of alcoholic liquors produced onsite, with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.*

*(127.3) **Tasting Room:** An accessory use with impact to a craft brewery, winery, or distillery establishment as a place for the consumption of spirits, wine, and beer produced onsite for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine, and beer sample is not to exceed 1 ounce for wine and beer and ½ ounces for spirits.*

*(137.1) **Winery, craft:** A single establishment in which wine is manufactured, and is operated by the licensee in accordance with State Law.*

Add proposed uses as conditional uses to certain zoning districts

The Planning and Development Department suggests, at least at the outset, adding the use with proposed conditions in three zoning districts as conditional uses requiring a special use permit. Specifically, we suggest the BC (General Business), MI (General Industrial), and MOR (Manufacturing Office Research) zoning districts as appropriate for the uses. These districts are proposed because MI and MOR, as industrial districts, are appropriate for larger scale alcohol production and distribution activities; and because BC (General Business) is a broad commercial district, which for the most part, does not include properties in the downtown business district, and therefore may stimulate economic growth in areas which are currently under-utilized, as opposed to the downtown district which has enjoyed significant economic activity and growth over the past 15-20 years. Should the effort prove successful, the Council may wish to add other zoning districts in the future, but at the outset, the Department believes an incremental approach prudent. (Planning and Development Department Exhibit "A" highlights the zoning districts impacted.)

**In BC (General Business)**

Add to Section 32-19(b)(19)

*(19) Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*

- a. Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms and taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*
- b. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.*
- c. All aspects of the distilling or brewing processes must be completely confined within a building, including the storage of all materials and finished products.*

- d. *All garbage and production waste must be stored in covered containers and not visible from public ways.*
- e. *Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).*
- f. *Beer gardens shall be permitted only as an accessory use with a special use permit in accordance to Section 32-56.4(g).*

**In MI (General Industrial)**

Add to Section 32-21(b)(2)

*(19) Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*

- a. *Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms and taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*
- b. *Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.*
- c. *All aspects of the distilling or brewing processes must be completely confined within a building, including the storage of all materials and finished products.*
- d. *All garbage and production waste must be stored in covered containers and not visible from public ways.*
- e. *Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).*
- f. *Beer gardens shall be permitted as an accessory use with a special use permit in accordance to Section 32-56.4(g).*

**In MOR (Manufacturing Office Research)**

Add to Section 32-23(b)(3)

*(19) Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*

- a. *Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms*

*or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms and taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*

- b. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.*
- c. All aspects of the distilling or brewing process must be completely confined within a building, including storage of all materials and finished products.*
- d. All garbage and production waste must be stored in covered containers and not visible from public ways.*
- e. Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).*
- f. Beer gardens shall be permitted as an accessory use with a special use permit in accordance to Section 32-56.4(g).*

**Add parking requirements**

The Planning and Development Department suggests that the minimum off-street parking requirement be amended as follows:

**In Article XIV: Off-Street Parking and Loading Requirements**

Newark Zoning Code Section 32-45 to be amended as followed: (Insertion shown in underline.)

Industrial, manufacturing, wholesaling establishment, <u>craft brewery, distillery, or winery.</u>	One off-street parking space per two employees on the shift of greatest employment, plus one off-street parking space per 200 square feet of floor area devoted to sales.
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**Create Special Use Permit Requirements**

In order to properly regulate craft breweries, wineries and distilleries and their associated accessory uses, while maintaining current alcohol regulations for restaurants and indoor movie theaters, the Planning and Development Department suggests that Section 32-56.4 under Article XVI: General Provisions, be amended. Specifically, because when this section was first introduced, the only facilities permitted to sell alcoholic beverages for consumption on premises were restaurants, and since that time we’ve added indoor theaters, and now propose changes to include craft breweries, wineries and distilleries, it is now necessary to differentiate which rules apply to which establishments (as opposed to calling them facilities). Therefore, in addition to amendments regulating craft breweries, wineries and distilleries, additional edits to Section 32-56.4 are recommended as follows (Insertion shown in underline. Deleted words are marked through.):

*Sec. 32-56.4. - Facilities selling alcoholic beverages for consumption on premises and restaurant patios.*

- (a) ~~Facilities~~ Restaurants selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory, or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements:
- (1) Live night club or floor show type entertainment defined as electronically amplified musical, dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or nonelectronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section shall be provided with all permitted live entertainment;
  - (2) There shall be no carry-out liquor service;
  - (3) Reserved;
  - (4) There shall be no less than 50 seats in the facility; and
  - (5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of adoption. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of its adoption.
  - (6) All existing facilities selling alcoholic beverages for consumption on the premises subject to a 12:00 midnight alcoholic beverage sales closing time as of (date of adoption of this ordinance), and all new such facilities located as specified in this subsection, shall be prohibited from selling alcoholic beverages on the premises after 12:00 midnight, unless such facilities receive a special use permit authorizing sales after 12:00 midnight, subject to the procedural requirements in Section 32-56.4(f) herein.
- (b) Those ~~facilities~~ restaurants selling alcoholic beverages for consumption on the premises and located within the central portion of the city bounded by Chapel Street on the east, Delaware Avenue on the south, Elkton and New London Roads on the west, and the University of Delaware's North Campus property and the White Clay Creek on the north, if the property line of any such facility is adjacent to the property line of a church, library, school, nursing home, hospital, and dormitory, shall require a special use permit, as provided in Article XX, Section 32-78 subject to the requirement of five affirmative votes of council for approval, and subject to all other requirements herein.
- (c) ~~Facilities~~ Restaurants licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant shall provide full restaurant service, with lunch, dinner, and dessert menus, which shall be defined as serving complete meals for consideration during all hours of operation; except that limited late service may be substituted for full restaurant service beginning 90 minutes before the time that alcoholic beverages are no longer served. The limited service of such food as sandwiches, salads, pizza, and similar items normally provided by taverns, luncheonettes, coffee shops, or snack bars shall not be deemed to be full restaurant service, but shall be deemed to be limited late service as permitted by this section. The service of alcoholic beverages shall be clearly incidental and complimentary to full and limited restaurant service. No age-based cover or similar surcharge for patrons

*shall be permitted in such facilities. This subsection regarding cover charges to take effect within 180 days of its adoption. There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to the hours of 4 PM to 9 PM. This subsection to take effect within 90 days of its adoption, and shall apply to all existing and new establishments licensed to sell alcoholic beverages for public consumption on the premises.*

*(d) Restaurant patios and sidewalk cafes. Restaurant patios and sidewalk cafes defined as decks, porches, or similar structures, whether covered or uncovered, raised or at grade, or the placing or locating of chairs and tables directly on sidewalks, used in connection with restaurants, bakery restaurants, and/or ~~tavern~~ tasting/taprooms shall be subject to the following special requirements:*

*(1) Total size shall not exceed 1,000 square feet.*

*(2) Food and beverages shall be served only to seated patrons.*

*(3) No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors, and Solicitors, of this Code.*

*(4) No electronically amplified sound shall be permitted.*

*(5) No overflow of patrons on sidewalks and/or street right-of-way shall be permitted.*

*(6) A minimum five-foot wide clear pedestrian path between any obstruction and the restaurant patio/sidewalk cafe shall be maintained at all times, but in no case shall the restaurant patio sidewalk cafe encroach into the public right-of-way. Upon application to the public works director, however, and in conjunction with review by the planning director, an intrusion into the five-foot wide clear pedestrian path may be permitted for periodic or special promotional events or related activities.*

*(7) Tables, chairs, umbrellas, and any other objects provided in connection with a facility located directly on sidewalks shall be secured in an orderly fashion or removed from the sidewalk area when dining facility is closed to the public.*

*(8) No tables and chairs nor any other parts of restaurant patios or sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other public fixtures.*

*(9) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained in a clean and attractive appearance and shall be in good repair at all times.*

*(10) No vending machines of any kind shall be permitted.*

*(11) For facilities directly on sidewalks, such facilities shall be swept and washed daily by restaurant operator including the adjoining sidewalks to the street curb. Raised decks, porches, and similar structures shall also be swept daily. Debris shall be disposed of properly in owner/manager's containers.*

*(12) Restaurant patios and sidewalk cafes shall be subject to all other applicable requirements of this code.*

*(e) Bar facilities in restaurants, defined as any counter in which alcoholic beverages may be stored, displayed, prepared and served, and at which patrons sit and/or stand and consume*

alcoholic beverages, shall be permitted, except as otherwise regulated herein, and shall be limited in size in terms of seats to no more than 15% of the total number of seats in the restaurant, not including outdoor seating at restaurant patios and sidewalk cafes.

(f) Special use permits for restaurants, craft breweries, craft wineries, craft distilleries, beer gardens, and indoor theaters selling alcoholic beverages for public consumption on the premises:

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

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

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

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

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

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

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

(D) *Other information as appropriate.*

(g) Special use permits for beer gardens, adjacent and accessory to a craft brewery, craft winery, or craft distillery, where the alcoholic beverages produced onsite are served or consumed, are permitted with the following conditions:

(1) No beer garden shall be permitted within 200 feet of land zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) unless approved by all owners of residential properties within 200 feet and by a super majority of City Council.

(2) A description of the beer garden location, layout and its operations shall be included in the application for the special use permit under 32-78(a)(1).

(3) Any noise emanation from the beer garden shall not violate the regulations of the City of Newark Municipal Code or other regulations pertaining to noise. There shall be no amplified sound in the beer garden area. Noise from the beer garden shall not interfere with the neighbor's enjoyment of their property.

(4) All garbage and production waste must be stored in covered containers and not visible from public ways.

(5) All hours of operation are limited to between the hours of 10:00 a.m. to 10:00 p.m.

(6) A fence may be required by City Council in addition to any State requirement for enclosures. Fence requirements shall be established on a case by case basis as specified by City Council. Fence requirements shall be based on the location of the establishment, adjoining land use, lot and building size, and proximity to residential properties and streets.

(7) No overflow of patrons on sidewalks and/or street right of way shall be permitted.

(8) Beer gardens shall have a maximum capacity of one person for each (10) net square feet of the floor area of the beer garden. Capacity of the beer garden shall be posted in the garden.

(9) Beer gardens may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.

(10) Beer gardens shall be subject to all other applicable requirements of this Code.

## **STAFF COMMENTS**

### Newark Police Department

1. The Department believes it is wise to limit the proposed uses to the BC, MI and MOR zoning districts, which for the most part do not include the downtown business district and, as such, will provide some separation from the University student population.
2. The Department recommends placing restrictions on renting these facilities out to University student organizations such as fraternities and sororities.
3. The Department is in favor of the 10:00 p.m. closing time which may help avoid many of the potential problems normally associated with alcohol consumption.
4. Adding craft breweries, wineries and distilleries to the special use permit points system is a good way for the City to monitor their business practices, and ensure that they are operating under the scope of their licenses.

### Planning and Development Department

#### *Code Enforcement Division*

1. The Division finds the provisions for the Special Use Permit as enumerated in Section 32-56.4 (f) and (g) to be balanced and will grant the ability to review each application on its own merits.
2. The safeguards added in 32-56.4(g)(4) for garbage and production waste material being stored in covered containers and not visible from public ways will aid in the Division's efforts to maintain a pristine community.
3. The limitation of hours of operation in 32-56.4(g)(5) should assist both the Code Enforcement Division and Newark Police Department in the enforcement of any potential noise and/or behavioral complaints from adjacent property owners.

4. The allowance to grant City Council the ability to require a fence in 32-56.4 (g)(6) will allow the Division to enumerate any concerns we may have at the time of application.
5. The limitations placed on overflow of patrons in 32-56.4(g)(7) and setting a maximum capacity in 32-56.4(g)(8) based on floor area should help in maintaining an orderly premises.
6. The Division does note some concern on creating public assembly places in the MI (and to a lesser extent MOR) industrial areas, however, we believe that the safeguards in Section 32-56.4(g) will minimize potential conflicts. Furthermore, because this will be a special use permit, if the Code Enforcement Division finds incompatible uses in these districts with the proposed facility, we will be available to address this with Council.

*Land Use and Planning Division*

1. The Land Use and Planning Division of the Department notes that Delaware has more than eleven microbreweries, farm wineries, or craft distilleries, including (but not limited to) Dover (Fordham & Dominion Brewing Company), Milton (Dogfish Head Craft Brewery), Milford (Mispillion River Brewing Co.), Felton (Pizzadili Vineyard and Winery), Smyrna (Painted Stave Distilling), Lewes (Beach Time Distilling, Blue Earl Brewing), Rehoboth (Delaware Distilling Company), Wilmington (Liquid Alchemy Beverages), and Georgetown (16 Mile Brewing Company). Our research has not uncovered concerns regarding these operations.
2. The Department believes that there may be a positive economic impact of permitting the production of alcohol as a conditional use in the BC (General Business), MI (General Industrial), and MOR (Manufacturing Office Research) zoned districts in the City of Newark.
3. The Planning and Development Department notes the special use permit process will enable the City to closely evaluate the appropriateness of the uses of this type on a case-by-case basis. In addition, in cases where there are significant issues, Section 32-56.4(f)(B) states special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority vote of Council.
4. The Department believes the requirements set forth in 4 Del C Sections 512A, 512C, and 512E of Delaware Alcoholic Beverage Control Commission, combined with the special use permit points system and revocation option as described above, should adequately address the concern for adverse impact.

Public Works and Water Resources

1. The Department supports the amendments as proposed. They note that infrastructure in general business and industrial districts is generally well suited to absorb additional demand for water, sewer and large truck traffic as may be necessary for distribution and deliveries.

**RECOMMENDATION**

Because there is the potential for a positive economic impact of permitting the production of alcohol with associated accessory uses as conditional uses in specific zoning districts in the City of Newark and in order to enable the City to adequately regulate craft breweries, craft wineries, and craft distilleries with a Council granted special use permit, the Planning and Development Department suggests the Planning Commission consider **recommending to City Council the following changes to the Zoning Code**:

**In Article II. Definitions**

Add to Section 32-4(a)

- (10.1) **Beer Garden:** *An accessory use with impact to a craft brewery, craft winery or craft distillery which is an open air, roofed or unroofed area where the alcoholic beverages produced onsite are served or consumed and is operated by the licensee in accordance with State law.*
- (11.1) **Brewery, craft:** *A single establishment in which beer, mead and/or cider are manufactured, and is operated by the licensee in accordance with State Law.*
- (33.1) **Distillery, craft:** *A single establishment in which spirits are manufactured, and is operated by the licensee in accordance with State Law.*
- (127.2) **Taproom:** *An accessory use with impact to a craft brewery, winery, or distillery establishment as a place for the sale by the glass and for consumption on the premises of alcoholic liquors produced onsite, with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.*
- (127.3) **Tasting Room:** *An accessory use with impact to a craft brewery, winery, or distillery establishment as a place for the consumption of spirits, wine, and beer produced onsite for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine, and beer sample is not to exceed 1 ounce for wine and beer and ½ ounces for spirits.*
- (137.1) **Winery, craft:** *A single establishment in which wine is manufactured, and is operated by the licensee in accordance with State Law.*

#### In BC (General Business)

Add to Section 32-19(b)(19)

- (19) *Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*
- a. *Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms or taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*
  - b. *Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.*
  - c. *All aspects of the distilling or brewing processes must be completely confined within a building, including the storage of all materials and finished products.*
  - d. *All garbage and production waste must be stored in covered containers and not visible from public ways.*
  - e. *Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits*

*brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).*

- f. Beer gardens shall be permitted only as an accessory use with a special use permit in accordance to Section 32-56.4(g).*

**In MI (General Industrial)**

Add to Section 32-21(b)(2)

*(19) Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*

- a. Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms or taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*
- b. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.*
- c. All aspects of the distilling or brewing processes must be completely confined within a building, including the storage of all materials and finished products.*
- d. All garbage and production waste must be stored in covered containers and not visible from public ways.*
- e. Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).*
- f. Beer gardens shall be permitted as an accessory use with a special use permit in accordance to Section 32-56.4(g).*

**In MOR (Manufacturing Office Research)**

Add to Section 32-23(b)(3)

*(19) Craft brewery, craft winery, and craft distillery subject to the requirements of Section 32-56.4(f) and the following special requirements:*

- a. Tasting rooms or taprooms for the tasting and sale of alcoholic beverages manufactured on the premises are permitted as accessory uses only. Tasting rooms or taprooms shall not operate as stand-alone bars or taverns. Tasting rooms or taprooms shall comply with all applicable regulations as required by the Delaware Alcoholic Beverage Control Commission and all City of Newark alcohol regulations. Only one tasting and/or tap room is permitted per primary use. Tasting rooms or taprooms may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.*

- b. Sales of alcohols manufactured outside the facility are prohibited, except as permitted by State law.
- c. All aspects of the distilling or brewing process must be completely confined within a building, including storage of all materials and finished products.
- d. All garbage and production waste must be stored in covered containers and not visible from public ways.
- e. Such establishment must offer the public, on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including by way of example: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, wine or spirits brewed or distilled on the premises for consumption off-premises and other retail items identified in 4 Del. C. section 512E(c)(5).
- f. Beer gardens shall be permitted as an accessory use with a special use permit in accordance to Section 32-56.4(g).

**In Article XIV: Off-Street Parking and Loading Requirements**

Newark Zoning Code Section 32-45 to be amended as followed: (Insertion shown in underline.)

Industrial, manufacturing, wholesaling establishment, <u>craft brewery, distillery, or winery.</u>	One off-street parking space per two employees on the shift of greatest employment, plus one off-street parking space per 200 square feet of floor area devoted to sales.
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**In Article XVI: General Provisions**

*Sec. 32-56.4. - Facilities selling alcoholic beverages for consumption on premises and restaurant patios.*

*(a) ~~Facilities~~ Restaurants selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory, or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements:*

*(1) Live night club or floor show type entertainment defined as electronically amplified musical, dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or nonelectronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section shall be provided with all permitted live entertainment;*

*(2) There shall be no carry-out liquor service;*

*(3) Reserved;*

*(4) There shall be no less than 50 seats in the facility; and*

*(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required*

to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of adoption. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m. This subsection to take effect within 90 days of its adoption.

- (6) All existing facilities selling alcoholic beverages for consumption on the premises subject to a 12:00 midnight alcoholic beverage sales closing time as of (date of adoption of this ordinance), and all new such facilities located as specified in this subsection, shall be prohibited from selling alcoholic beverages on the premises after 12:00 midnight, unless such facilities receive a special use permit authorizing sales after 12:00 midnight, subject to the procedural requirements in Section 32-56.4(f) herein.
- (b) Those ~~facilities~~ restaurants selling alcoholic beverages for consumption on the premises and located within the central portion of the city bounded by Chapel Street on the east, Delaware Avenue on the south, Elkton and New London Roads on the west, and the University of Delaware's North Campus property and the White Clay Creek on the north, if the property line of any such facility is adjacent to the property line of a church, library, school, nursing home, hospital, and dormitory, shall require a special use permit, as provided in Article XX, Section 32-78 subject to the requirement of five affirmative votes of council for approval, and subject to all other requirements herein.
- (c) ~~Facilities~~ Restaurants licensed by the Delaware Alcoholic Beverage Control Commission as a restaurant shall provide full restaurant service, with lunch, dinner, and dessert menus, which shall be defined as serving complete meals for consideration during all hours of operation; except that limited late service may be substituted for full restaurant service beginning 90 minutes before the time that alcoholic beverages are no longer served. The limited service of such food as sandwiches, salads, pizza, and similar items normally provided by taverns, luncheonettes, coffee shops, or snack bars shall not be deemed to be full restaurant service, but shall be deemed to be limited late service as permitted by this section. The service of alcoholic beverages shall be clearly incidental and complimentary to full and limited restaurant service. No age-based cover or similar surcharge for patrons shall be permitted in such facilities. This subsection regarding cover charges to take effect within 180 days of its adoption. There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours, reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall be restricted to the hours of 4 PM to 9 PM. This subsection to take effect within 90 days of its adoption, and shall apply to all existing and new establishments licensed to sell alcoholic beverages for public consumption on the premises.
- (d) Restaurant patios and sidewalk cafes. Restaurant patios and sidewalk cafes defined as decks, porches, or similar structures, whether covered or uncovered, raised or at grade, or the placing or locating of chairs and tables directly on sidewalks, used in connection with restaurants, bakery restaurants, and/or ~~tavern~~ tasting/taprooms shall be subject to the following special requirements:
- (1) Total size shall not exceed 1,000 square feet.
  - (2) Food and beverages shall be served only to seated patrons.
  - (3) No bar or similar structure used for sale or dispensing of liquor shall be permitted. Cooking facilities are prohibited, except as specifically authorized in Chapter 21, Peddlers, Vendors, and Solicitors, of this Code.
  - (4) No electronically amplified sound shall be permitted.
  - (5) No overflow of patrons on sidewalks and/or street right-of-way shall be permitted.

- (6) A minimum five-foot wide clear pedestrian path between any obstruction and the restaurant patio/sidewalk cafe shall be maintained at all times, but in no case shall the restaurant patio sidewalk cafe encroach into the public right-of-way. Upon application to the public works director, however, and in conjunction with review by the planning director, an intrusion into the five-foot wide clear pedestrian path may be permitted for periodic or special promotional events or related activities.
- (7) Tables, chairs, umbrellas, and any other objects provided in connection with a facility located directly on sidewalks shall be secured in an orderly fashion or removed from the sidewalk area when dining facility is closed to the public.
- (8) No tables and chairs nor any other parts of restaurant patios or sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other public fixtures.
- (9) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained in a clean and attractive appearance and shall be in good repair at all times.
- (10) No vending machines of any kind shall be permitted.
- (11) For facilities directly on sidewalks, such facilities shall be swept and washed daily by restaurant operator including the adjoining sidewalks to the street curb. Raised decks, porches, and similar structures shall also be swept daily. Debris shall be disposed of properly in owner/manager's containers.
- (12) Restaurant patios and sidewalk cafes shall be subject to all other applicable requirements of this code.
- (e) Bar facilities in restaurants, defined as any counter in which alcoholic beverages may be stored, displayed, prepared and served, and at which patrons sit and/or stand and consume alcoholic beverages, shall be permitted, except as otherwise regulated herein, and shall be limited in size in terms of seats to no more than 15% of the total number of seats in the restaurant, not including outdoor seating at restaurant patios and sidewalk cafes.
- (f) Special use permits for restaurants, craft breweries, craft wineries, craft distilleries, beer gardens, and indoor theaters selling alcoholic beverages for public consumption on the premises:
- (1) Procedures: All facilities selling alcoholic beverages for public consumption on the premises, proposed after the adoption of this ordinance, that require council approved special use permits for such sales, shall be subject to the following:
- (A) Special use permits as required herein shall be reviewed as provided in Article XX, Section 32-78, of this chapter.
- (B) Such special use permits, as they relate to the sale of alcoholic beverages, may be revoked at any time by a majority of council. Council may consider revocation upon a request of the mayor, a member of city council within whose district the restaurant, craft breweries, craft wineries, craft distilleries, beer gardens or indoor theater is located, or the city manager. Such revocation shall be for a time period specified by council, but in no case shall be longer than one year from the date of revocation. Revocations shall be reviewed under the procedures in Article XX, Section 32-78, of this chapter.
- (2) Review criteria: In reviewing whether the applicant has demonstrated compliance with the factors for granting a special use permit specified in Article XX, Section 32-78 of this

chapter, city council shall consider a written report prepared by the planning director, at the direction of the city manager, which shall include the following:

- (A) A police department evaluation concerning compliance with Chapter 19, Minors; Chapter 22, Police Offenses, Article XVII, Sales and Distribution of Alcoholic Beverages; and, Chapter 32, Zoning.
- (B) A building department evaluation concerning compliance with Chapter 32, Zoning, and Chapter 7, Building.
- (C) Any available information from the Delaware Alcoholic Beverage Control Commission; and,
- (D) Other information as appropriate.

(g) Special use permits for beer gardens, adjacent and accessory to a craft brewery, craft winery, or craft distillery, where the alcoholic beverages produced onsite are served or consumed, are permitted with the following conditions:

(1) No beer garden shall be permitted within 200 feet of land zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) unless approved by all owners of residential properties within 200 feet and by a super majority of City Council.

(2) A description of the beer garden location, layout and its operations shall be included in the application for the special use permit under 32-78(a)(1).

(3) Any noise emanation from the beer garden shall not violate the regulations of the City of Newark Municipal Code or other regulations pertaining to noise. There shall be no amplified sound in the beer garden area. Noise from the beer garden shall not interfere with the neighbor's enjoyment of their property.

(4) All garbage and production waste must be stored in covered containers and not visible from public ways.

(5) All hours of operation are limited to between the hours of 10:00 a.m. to 10:00 p.m.

(6) A fence may be required by City Council beyond State requirement for enclosures. Fence requirements shall be established on a case by case basis as specified by City Council. Fence requirements shall be based on the location of the establishment, adjoining land use, lot and building size, and proximity to residential properties and streets.

(7) No overflow of patrons on sidewalks and/or street right of way shall be permitted.

(8) Beer gardens shall have a maximum capacity of one person for each (10) net square feet of the floor area of the beer garden. Capacity of the beer garden shall be posted in the garden.

(9) Beer gardens may be rented out to individuals or groups for private parties only with a Newark Police Department issued Special Event Permit.

(10) Beer gardens shall be subject to all other applicable requirements of this Code.

Mr. Fortner: And that summarizes the report. Again, that's the map showing where the impacted areas potentially could be, and we could take any questions and public comment.

Mr. McIntosh: Question.

Mr. Firestone: Go ahead.

Mr. McIntosh: I notice you didn't have Wilmington as one of the places that you looked at in your study and yet there was down there on the waterfront in the past year quite a bit of discussion around the beer garden that they did put in there. I'm wondering why you wouldn't have looked at that. I guess it did turn out to be successful because they granted that license to them for the next two years, or something like that. And there was a lot of discussion in that specific instance about the neighbors there in, I guess, Justison Landing and so on, many of whom were against that. And you're saying that they all have to be for it before that could happen here. And I'm wondering, that seems a little restrictive to me. To try to get all of anything is pretty much impossible. So those are really two separate things. One being wouldn't Wilmington have been a good place to look and I'm still interested in why, even now, after the fact, you probably ought to take a look at what they did there. I think it's very relevant to what we're doing, probably more so than what's going on in Dover, it seems to me, if you're looking in the state. That's all.

Ms. Feeney Roser: Do you mind if I address that?

Mr. McIntosh: Go ahead. I would love that.

Ms. Feeney Roser: Thank you. One of the reasons why Wilmington didn't come up in the research is because Constitution Yards, which is the riverfront beer garden, is not a brewery. They don't manufacture there, it's just an outdoor place where you can have brews made by a variety of brewers. They also have cool Jenga games and stuff like that. We can certainly look at the regulations that were put into place for that, but mainly that's why it didn't come up in our research. We were looking for facilities where there was production on-site and you were sampling or tasting or buying the beer, wine or whatever that was made there. But we certainly can look at what regulations they came up with to address neighbor concerns.

And then the other things is that the super-majority, or the  $\frac{3}{4}$  rule, or all adjoining property owners would need to agree, that's something we can talk about. We were very concerned about how a beer garden might impact a residential neighborhood adjacent. So we looked at other places that had some of these rules and we sort of picked from them what we thought you might want to consider.

Mr. McIntosh: Well it just seems to me that if you're a person who abhors alcohol, for instance, you know, just period, end of message, it's an evil thing, then you might just be opposed to it on your own personal bias or belief . . . put it that way . . . your own personal belief system, when it really has no impact on the community around you. It has an impact on you because you believe something different than that. I just think that's really, if you're really serious about economic development in these areas and you really want something to actually happen there, I would . . . I mean, I don't know, I'm looking at it and there's probably not a lot of houses around it anyway . . . but still I think that would be a restriction that would guarantee you wouldn't have a lot of economic development.

Ms. Feeney Roser: There are some areas that are adjacent to residential. For instance the Fairfield Shopping Center is a prime candidate for something like this, as is the Park N Shop across the street. So there are some, although they're large enough that the location may be beyond the 200 feet.

Mr. Fortner: And that's for a beer garden. We're probably not going to get a beer garden across the street. We probably wouldn't do a beer garden there, you know.

Mr. McIntosh: Well I know Tom might . . .

Mr. Fortner: Its 200 feet and it would probably be hard to get a beer garden within 200 feet and try to discourage that I guess. I just tried to make it really strong.

Mr. Firestone: Just to follow up on a couple of the points. On allowing an individual to effectively have veto power, that's sort of typical sort of free rider problem where even if they don't have moral beliefs, you may get some people basically trying to hold out to get some personal compensation if you allow individuals to have that much power over development.

On the issue of  $\frac{3}{4}$  of all members, that's a pretty high bar when you only have seven Council members. It would take six. It's not clear from your proposal whether you were talking about members present or members on the Council. Again, that makes the bar even, perhaps, more difficult. One thing I did notice as we were sitting here is that it doesn't appear to me that the term craft is defined. And I mean we use the terms brewery craft and distillery craft, but we don't define craft. At least I didn't see a definition of craft. I mean it just says a single establishment in which beer, mead or cider is manufactured and operated by the licensee in accordance with State law. So presumably you could get Budweiser come in and this Buds for you and they could open up a brewery . . .

Mr. Fortner: Well it is defined under State law, the word craft. It's essentially a micro-brewery under State law.

Mr. Firestone: But your definition doesn't tie back to the micro-brewery under State law.

Mr. Fortner: It does. They couldn't sell over 2 million barrels and so they wouldn't be able to do it.

Mr. Firestone: I'm just going with the definition that you proposed in the Code.

Mr. Fortner: Okay.

Mr. Firestone: And I agree that if you tie it back to micro-brewery definition in State law, you could pinpoint more. But right now all it does is say brewer craft.

Mr. Hurd: Can I follow-up and sort of ask why you didn't use the State Code definitions?

Mr. Fortner: Well, style. So I didn't want to use their term garden wineries because we're not going to have garden wineries. We're just going to have a winery, if they ever become legal on the State level. And micro-breweries is a common term but then you get into micro-distilleries and micro-wineries. First of all, they don't come up on spell-check so you get the little squiggly things and the words just didn't look right to me. And I like the word craft. I thought it made it uniform. Craft wineries, craft breweries and that was a term that was used in other municipalities. I mean they used micro-breweries, craft breweries, craft distilleries were terms a lot of cities used and it just seemed like a friendlier term to me. But you if you call it micro or craft, it's the same thing. And it's defined under State law and it's defined in our definitions.

Ms. Feeney Roser: But, Mike, for craft distillery, which is the term that we used, the State does say that they shall not sell more than 750,000 proof gallons of distilled liquors.

Mr. Fortner: Yes.

Ms. Feeney Roser: For the micro-brewery there is a limit that you mentioned, something huge like 2 million. But that's because it's the term micro-brewery.

Mr. Fortner: Yes.

Ms. Feeney Roser: There is no limit on just brewery. So would we consider calling it a micro-brewery, craft?

Mr. Fortner: We can call it whatever people want it.

Ms. Feeney Roser: And then we would have . . .

Mr. Firestone: We can call it brewery craft but then we still to tie it back to a definition on size or to State law and we can call it whatever we want. We can call it black, we can call it white. It doesn't really matter.

Mr. Fortner: I did tie it to State law.

Mr. Hurd: I didn't think we were going to get to this but I was going to suggest that we say, because when you say in accordance with State law, I think you need to say State law for micro-breweries. Call out which is the establishment since you're using different names.

Mr. Fortner: For micro-breweries?

Mr. Hurd: And then say State law for craft distilleries and then State law for farm wineries because they don't have a micro-winery definition yet, you're saying, right?

Mr. Fortner: Well it requires them to grow the grapes on the site.

Mr. Hurd: But they don't have . . . the State does not currently recognize an establishment where you . . .

Mr. Fortner: Import the grapes in.

Mr. Hurd: Ferment the wine separately from . . .

Mr. Fortner: Yes but we could say . . . I just worry that they will change the law. Micro-breweries they probably wouldn't change but if you quote a section and they were to recodify, we'd have to go through and worry about where we're referencing State law.

Mr. Hurd: Yes.

Mr. Fortner: There is no brewery that goes beyond the micro-brewery. There's not a definition for a macro-brewery.

Ms. Feeney Roser: But it couldn't hurt to put it in.

Mr. Fortner: Yes, I was thinking about . . .

Mr. Hurd: I think it clarifies it and closes a potential hole because some people might say I'm in accordance with State Code on that section over there. If State Code puts something in later, they could go under that and we really didn't want them under a particular section.

Mr. Fortner: Okay.

Mr. Stozek: This document takes me back in time. I remember when I used to review proposals from the engineering department at DuPont. And when reading documents likes this we always used to say the engineering department's motto is why make something simple when you can make it complex and wonderful. I guess a couple of specific things first before I get to my general comment. One of the things in here says an establishment, and I guess I'm talking about craft breweries but all of them, must offer the public things like tours, educational classes, demonstrations and tasting rooms. Is that anywhere in the State law? Why are we requiring these relatively small operations to give tours?

Mr. Fortner: That doesn't seem to be in State law. I took it from a lot of laws, including Smyrna's. It's a very common requirement that's supposed to be an added benefit where a micro-brewery, especially when they're in a commercial district, that we're supposed to allow

that it's not just a drinking establishment, that it's a whole community thing. And most of them are going to gladly obey that.

Mr. Stozek: But this requires it.

Mr. Fortner: It requires it on some sort of . . . at least somewhat. It doesn't require . . . make some sort of effort to do it.

Ms. Feeney Roser: It says regular and continuing, so that could be annual.

Mr. Fortner: Yes.

Mr. Silverman: Will it be a condition of their annual City license? Think about how it's going to be enforced.

Mr. Fortner: It could be. We could do it that way or, you know, we're going to notice when they're not doing it and why aren't they doing it. That's part of the condition they're supposed to be doing. I don't anticipate it being a problem at all because all these places gladly do it. But it's sort of important that they do it and . . .

Mr. Stozek: But that's the difference of being requested, can you give us the tour, as opposed to requiring them to give tours.

Mr. Fortner: They can do it on a request basis.

Mr. Stozek: This says they're required.

Mr. Fortner: Well they're required to do it, but how they do it is up to them. I mean they're required to do it.

Ms. Feeney Roser: The things that we're saying that are required are things like tasting rooms and retail sales areas. I mean it's not limited to making them give you tours, right? It's just some other thing to have available rather than people sitting and drinking is your point.

Mr. Fortner: Yes. Okay.

Ms. Feeney Roser: Which the Commission can decide is important or it's not.

Mr. Hurd: I was just going to add that this seems to be a place to tie it into the points system since they have to get a special use permit

Mr. Fortner: Well, they only have to get a special use permit, technically, once. And assuming they stay in good standing, then they don't get pulled.

Mr. Hurd: Right. If they say we're going to give tours, have a tasting room and we have a retail establishment, and they stop doing tours, that should be points for them. If they continue to not give tours, they could possibly lose their permit. I think that's a mechanism that could have a repercussion for a lack of compliance as opposed to just saying well you're not doing and you're supposed to.

Mr. Fortner: Yes, but it has to be a requirement for us to do that, and that's why it's in the law. And so if they're not doing it, I mean, we would eventually come and say why aren't you doing this, you're supposed to, that's what you got a special use permit on a condition that you do tours and things like that.

Mr. McIntosh: Let me ask this question. Is the primary purpose of adding the definitions to the Code here, is that to spur economic development in the City?

Mr. Fortner: Well in the broad sense, yes. I mean, to provide jobs, certainly. To create a tourist industry, which these things do. To provide more culture here in the City of Newark for its residents and for people to visit. So in all those aspects, economic development.

Mr. McIntosh: Okay, so if you really want to provide economic development, you put as little as necessary strings attached to the owner as possible. So if I'm opening a micro-brewery or craft brewery and Bob is opening one too, and Bob decides that he's going to have tours, and I decided I wasn't going to have tours, that would be my decision. Now if Bob was right about having tours, he's going to attract more people to his craft brewery than I am and I'll be darned if I'm going to allow that to happen. So I was going to have three tours or something, or super-tours. I think that the system will, in these kinds of areas, I'm not saying across the board, but in areas such as this, this gives the entrepreneur, which are typically the kinds of people who do these things, a sense of ownership of how they're going to present their product. And it's not going to be just come in here and swig alcohol because that's not the way that works.

Mr. Fortner: Well communities also want to regulate what type of businesses come in. And with this type, with communities making these things legal, they want those types of services. They do not want business owners coming in and now giving, necessarily, the tours and all that. So it creates a signal that we want you to come in but we want you to have this cultural component to it. And it makes that clear. So if Bob is going to do it, and most of them are going to do it anyway, that's probably true, but we're telling the people that if you don't want to do that stuff, Newark isn't where you want to come. And maybe that's what . . .

Mr. McIntosh: Well if that's what you want.

Mr. Fortner: I think that's what we're . . . well it's not what I want, it's what the community wants.

Mr. McIntosh: No, I'm just . . . I wasn't saying you, right? But what I'm saying is that you could say here are the kinds of things that we think you ought to do and you should consider doing, which you're probably preaching to the choir there, but when you make it a regulation that they have to do it, it just seems to me, why would I bother? What's the next thing you're going to tell me to do, and let me go some other place where that doesn't happen? And I think that if you want to spur economic development in this way, then you ought to spur economic development. Don't throw roadblocks up. Make it so that, like when we opened the world to banks here in the early 80s, right? We said come on in. You can charge whatever usury fees you want. Well nobody charged 70% or things like that, but they legally could have. But the economic system made sure that that didn't happen. So that will happen here too. It is quite common to have the things that you're talking about but that's up to the individual, it seems to me, anyway, to make those decisions about their own business. That's all I'm saying.

Mr. Firestone: I mean it is a little overly restrictive to require all of those, and that's certainly one reading of that provision.

Mr. Silverman: Mr. Chairman.

Mr. Firestone: Yes, Mr. Silverman.

Mr. Silverman: I read through these 25 pages probably about three times. I sat down and tried to advise a potential client as to what they would need to do to open up a micro-brewery. There is no clear language, there is no clear path in this document. There's no single table that tells me that I have manufacturing, storage, distribution, a tasting room, a showroom, a beer garden, food limited, food unlimited, indoor, outdoor, ratios and requirements. I have no idea as to what's the maximum square feet I could have here. Can I go into the old A&P and have 40,000 square feet of picnic tables and my brewing operation in what's now the back storage freezer room and have the equivalent of what I believe the City residents would view this operation as what the newspapers described as simply daytime drinking activities? We're going

to get my fraternity brothers together and we're going to go up there and we're going to party before the game. What if I want to put tents up in a parking lot? Is fencing mandatory? Does there have to be on-site supervision in all these areas, not just one cashier, at all times? The parking is based on sales area. If I was advising a client, I would say great, you know how big our sales area is going to be? As small as we can make it. We'll call it our sales area. But do you know how big our serving area is going to be? We'll make it as big as we want because there isn't any parking requirement for it.

Mr. Fortner: There is a parking requirement for a sales area.

Mr. Silverman: For the sales area but not for the serving area. I could have . . .

Ms. Feeney Roser: The tasting area is the sales area.

Mr. Silverman: I could have a half-acre under roof in the old Sears store of rows of picnic tables, and there is no parking requirement.

Ms. Feeney Roser: But you're not going to be making very much beer, Alan, if your whole thing is seating, right? I mean you can only sell alcohol that is produced on-site. So if you're using a really small area to produce sales, you can have seating for . . .

Mr. Silverman: Sales to me is not production. It's not manufacturing. It's not storage of sugars and malts. Sales is the counter where I go from the tasting room with my ½ ounce of hard liquor and say I like that bourbon and I walk over to the small counter where I can buy it by the bottle or buy it by the case. That's a sales area. You haven't defined any of these areas.

Ms. Feeney Roser: Well I know we talked about sales area as being any place where alcohol is consumed on premise.

Mr. Fortner: There's a room and there's a bar here and there's . . .

Mr. Silverman: That's not sales to me. Take this to a Council person. Take it to the public.

Mr. Fortner: A sales area is the whole facility.

Ms. Feeney Roser: Alan, if you have suggestions for what a sales area is and that we should add a definition, let's talk about it. I don't understand why you're saying take it to a Council person.

Mr. Silverman: I'm saying you understand what a sales area is but to me a sales area is when I walk into a package store, the stuff on the shelves, the growler area, is the sales area. Now if I order a keg and it's in the back in a refrigerator, is that the sales area? No, it's a storage area.

Mr. Fortner: That's not the sales area, no. But the room that you go in is a sales area. If the room is huge and it's full of picnic tables, that's a lot of sales area.

Mr. Silverman: I still don't understand whether this is a Saengerbund-type operation that goes on all year around . . .

Mr. Fortner: Saengerbund?

Mr. Silverman: With picnic tables and people coming out with trays of beer and I can buy bratwurst? Or is this a boutique thing where I go in, I try different beverages, I try it with some food, and the whole operation is half the size of this room? I can't picture this. You tell me . . . you say beer garden to me and I go on the internet and I get a place in Germany that has a big open area with trees and benches and people having a good time. These definitions aren't tight. The ratio of areas aren't tight. Spreading requirements through the Code . . . you know,

I'd like to see this whole notion of a beer garden as one single section of the Code with reference back to other sections.

Mr. Fortner: Well it is, Alan. We have definitions, which we already reviewed. And then all the regulations pertaining to a micro-brewery and wineries are in the sections of the Code altogether so it's very clear, and then it refers to a special use permit. You don't want all the special use requirements in the Zoning Code for every zoning district. It says here are the requirements for a micro-brewery in the Zoning Code. This is how it's defined in the definitions and then it requires a special use permit under Section 32-56. And that's how we do all things under section B.

Mr. Silverman: This is not a very readable document. It needs to be heavily edited with sections and headings. And my last point is this whole notion of we're going to have the neighbors decide . . . are we talking about property line? Are we talking about zoning district? Are we talking about distance to structures? Is this starting to sound familiar with another large project that Newark got in trouble with?

Mr. Fortner: Okay, I'll take out . . .

Mr. Silverman: And along with that there's a requirement in the ABC regulations with respect to notifying neighbors and the ability of the public around a site to ratify or nullify a license. Maybe we don't need this second level of permission with City Council. If you qualify for a State liquor license and can make it through the liquor control board and their public input, do we want the City to put another layer of go or no-go? I'm not talking about restrictions in noise and things like that. They're just some . . .

Mr. Stozek: That was part of my comment. How much of the verbiage in here duplicates what's in the Delaware Code?

Mr. Fortner: I tried to eliminate that as much as possible and use references like "according to State law." There are a couple of sections, like for example where we talked about tasting room and when we defined tasting room, we used State law there, which could've just said State law. But other than that, I looked at State law and then tried to make it Newark . . . I generally looked at requirements that we would have for say restaurants and patios. We took that, a lot of those same principles and applied them. For example, a restaurant in Middletown or whatever, it's like that. You just apply to the State and then you open up. The City of Middletown has very little involvement in that. But here we add extra regulations because of our history with alcohol. So I took those general principles and applied them to this and it's just like we do with restaurants. So I did very little overlap, I think.

Ms. Feeney Roser: There are times when you have to define things. For example, a taproom. The State law would allow the sale of alcohol in a bar-like atmosphere and no food, and you could sell any kind of alcohol there. We weren't at all interested in doing that. What we were interested in was allowing someone to come into a micro-brewery, winery, whatever, and sample the wares, and then purchase a glass or two for consumption on premise. That's different than the State definition of a taproom. So some of the definitions had to be changed in order to fit Newark's mode of trying to control alcohol consumption.

Mr. Silverman: Maybe my problem is the image I have of a beer garden as an active recreation, Saengerbund, sit around, drink and have a good time.

Mr. Fortner: Okay.

Mr. Firestone: Commissioner Hurd.

Mr. Hurd: I actually just have two clarifying questions. When the Police Department talks about asking us to put into the Zoning Code restrictions on the special event permits for fraternities and sororities, that makes me a little . . .

Mr. Fortner: It's for all groups. It's for all groups. That was their original comment. Maureen, go ahead and take it.

Ms. Feeney Roser: Yes, that's how we addressed that concern. They wanted us to say no sororities and no fraternities, but you can't do that. But if you require anyone who wants to rent this place out, that's not a bunch of people going and deciding to have some alcohol there, but to rent it out for a private party, that would have to be done with a special event permit from the Police Department, which is done anytime someone wants to expand premises, which includes alcohol consumption. GrainFest, for example, got a Police special event permit.

Mr. Hurd: And they have the discretion to say not you guys and not get in trouble?

Ms. Feeney Roser: Well, not necessarily, but they will have the name and phone number of the person who has signed up for the permit and I think that's very attractive to them.

Mr. Hurd: Okay. The second question is just where you were looking at other micro-breweries and such in Delaware, are there any, sort of, substantive differences between their Zoning Codes that these breweries are operating under and our Zoning Code . . . the proposed Code here?

Mr. Fortner: No. These are . . . not substantially. In fact, I used them strongly as a model.

Mr. Hurd: Then I guess to add onto Alan's question, are there areas of that Code that talk about area regulations or ratios to ensure that the ancillary spaces or auxiliary space, the separate spaces, are in fact accessory and subservient to the primary?

Mr. Fortner: Not so much in Delaware. In other states they did put these kind of things like that . . . micro-brewery . . . and they were all over the place. Part of that is because they allow it much more liberally than we would allow it. They allow it in say neighborhood commercial, equivalent to that, where it's mixed in almost a neighborhood pub. And so they have limits like a place like that they'd say 9,000 barrels. The standard, I think, is like, I read according to the APA is 15,000 for micro-brewery. But then I had some going up to 60,000 and I didn't understand why these communities were . . . it varied so much and I assumed it had something to do specific with them. But they kind of say okay you can have a micro-brewery here but you can't make more than 60,000 barrels, which seemed kind of arbitrary . . . it was like 15,000 barrels.

Mr. Hurd: I wasn't talking about brewing capacity. I was talking about area ratios.

Mr. Fortner: Oh, area. Yes, some of them, not so much in Delaware but in other locations, they would do things like, usually it was . . . I forget but they'd have so many square feet maximum. That's how . . . it wasn't so much how to regulate the difference between the selling area and the brewery, it was trying to control the size of how big the brewery could be. And that's what a lot of communities wrestled with. How big do you want these things to be and should we put a cap on them? And so some places said barrels, and they'll put a cap on barrels. Other places will just say you can't have more than, you know, 10,000 square feet for your brewing area, or 20,000 square feet. And I had a hard time understanding what criteria they were using and how to set some sort of standard because, again, they come from different kinds of places and have different kinds of . . . allowing different kinds of land use near residential and downtowns and things like that, and they wanted to cap how big some of these places were. So they did set them.

Mr. Firestone: It seems like it might have been useful to get on the phone with some of these folks to clear up some of these ambiguities in places where you were puzzled as to why certain regulations are so . . . you can't always tell things on the face, but they may have good reasons why they were set up that way, and that might have helped.

Mr. Fortner: What we established here was something that was very limited to certain areas, industrial. The difference between commercial and industrial, those will tend to regulate itself. If someone who wants to be smaller and they want to focus more on the taproom, they're going to more likely go for commercial. People that are more interested in manufacturing and distribution are going to go to the industrial areas because they've got the facilities that they'll need. It just seemed like the market regulates itself. Why . . . again, we're talking about . . . the comment was why make something that is simple, more complicated. Again, coming up with all of these numbers, okay you can't have more than 15,000 barrels, how are we going to regulate that? Why don't you let the market regulate itself?

Ms. Feeney Roser: Mike, I think the comment was perhaps we should have had some conversation with the other communities that regulate them to try to understand why they put the regulations that they did on it.

Mr. Fortner: Okay. I mean, you can, but I just thought I understood why, but the numbers, they were all over the place.

Mr. Firestone: On a somewhat related note, we do have local restaurateur, Two Stones, who also have now Two Stones Brewery with a manufacturing facility and a tasting room and I was there . . .

Ms. Feeney Roser: Did you take Tom with you?

Mr. Firestone: I would say the area where you could get a beverage was probably about half the size of this room, maybe even a little smaller, but the facility is quite large as far as the production facility and the storage facility because I did get a little sort of special tour. It wasn't an organized tour, and I'm not sure that they have organized tours there or not. But they're someone else, given that they're local, and they're doing this and they just recently moved into that area, it might be useful to have a conversation with them as well.

Mr. Stozek: One last question just for clarification. I read this many times and I'm still confused by it. Page 23, Section 32-56.4 talks about restaurants and says you can have alcohol consumption within 300 feet of a church, school, library, nursing home, etc. shall be permitted except otherwise provided therein subject to the following requirements, and then there are six requirements. So I assume that means if you're within 300 feet of a church or school, as long as you can comply with these six things, you can sell alcohol. That's what I mentioned to you before the meeting. That surprised me. I thought the rule in Newark was you couldn't sell alcohol within 300 feet of a church or school, but maybe I was wrong.

Ms. Feeney Roser: At one point it was that, and the Code was changed during the years to reflect what's here.

Mr. Stozek: Do you remember how long ago that was?

Ms. Feeney Roser: Maybe sometime in the 90s, the late 90s.

Mr. Stozek: But the other thing, under #1, I understand you don't want live floor shows but you're saying you can have, for instance, an acoustic guitar player as long as you have one person, but you can't have a duet. I've been to a lot of places, even on Main Street, where it's very common to have a duet. I don't know why we're restricting it to one person.

Ms. Feeney Roser: This is existing Code. The only thing we were doing was trying to make provisions, now that we have indoor theaters and we're contemplating breweries, that would make it clear that facilities actually meant restaurants. To redo the entire alcohol Code is a bigger issue than adding to this, but that's existing Code. The only changes are what's been crossed out and restaurants put in for facilities.

Mr. Stozek: I've been to other places . . . I realize you don't want a floor show and you don't want a rock band with 15 members . . . but I've been to a lot of places where they might have a small jazz group with three or four members performing as background music, so to speak. It's not there for major entertainment . . . I don't know, I could see that in maybe a winery more so than a beer garden, but somehow this is overly restrictive.

Mr. Fortner: That's our law right now. I mean, Council . . .

Ms. Feeney Roser: And it would not apply to . . .

Mr. Fortner: No, it wouldn't apply to breweries.

Mr. Stozek: But if you're more than 300 feet from a church, it doesn't apply, right?

Ms. Feeney Roser: Right.

Mr. Firestone: I think what I'd like to do now is take public comment and then we can continue any discussion. So without any objections, I'd like to call Kathy Drysdale, who has been waiting patiently. If you could identify yourself for the record when you get up to the microphone please.

Ms. Kathy Drysdale: My name is Kathy Drysdale and I am a co-owner of Braylock Brewery, not that we've done anything yet because we're looking for a location. But we are registered with the State and we have our EIN number and we have all those good things, so we're ready to go. I guess . . . I'm really not a good public speaker, so bear with me. I do want to start out by saying I am not a beer brewer myself. I am not a beer connoisseur. I'm a scotch drinker. There are certainly many, many beer enthusiasts and many fans of craft beers and that's shown by so many breweries that are popping up all over the country. Delaware is kind of taking a very slow start catching up with a state like North Carolina, where they're everywhere.

Before I go any further, I want to thank you for all the work you guys have put into doing this ordinance. I know what it took because I've done a lot of the research myself and you've done a really nice job with it. And I think it's something that most . . . I can't speak for wineries or spirits, but from a brewery standpoint, I think you've hit most of the items nail on the head. And I think you for taking the time because I know it's not easy.

A couple of things I'll address that you guys have asked that hopefully will help a little bit. As far as the tours go, or the selling of glasses or shirts or whatever, I think industry-wide, that's something we welcome. And somebody did say that. That, to us, is showing pride in our business and we want to educate the public. We want to have this be a "family" kind of environment. It's not a bar. We love closing at 10:00 p.m. I don't want to be open any later than that. I want people to bring their kids. I want to have a ping-pong table. I want to have corn-hole. I want this to be a family environment. We want this to be an area where Newark residents feel welcome to come and to be their "third place." You have home, you have work and you have a third place. That's what we want to be.

In response to the size of brewing, I know the State Code says 2 million barrels a year. One barrel, just so everybody knows, is 31 gallons. Dogfish produces 250,000 barrels a year, roughly, give or take. What we're looking at doing is like 400. And I think we would be more the norm of what you would see. Dogfish isn't going to . . . you're not going to have a Budweiser or a Dogfish come in under these regulations. So, anyway, I hope maybe that helped a little bit.

I'm the number cruncher of this business, I'm not the brewer. So I'm learning a lot about beer and about brewing as I'm going along but I may not be able to answer any questions you have about the brewery itself. That goes to one of my partners, Kent Steeves, who is out of town. I know he's talked to Maureen already and I know he'll be more than happy to talk to anybody about any questions or to help, or whatever, as we go along.

I honestly believe that these recommended zoning changes establish a very positive, a very proactive, a very supportive business and City relationship, and I think that's what we all want. We want to work with you guys and we want you to work with us, as well. From our side . . . and I've read this thing three or four or five times as well, to be very honest with you . . . from our side, the business challenges that we would have in adhering to this ordinance are very minimal. They would be related more to business flexibility rather than being able to open our doors, so to speak. I would request, if you don't mind, a little clarification or consideration, we understand, for example, if we want to rent out part of the beer garden or the taproom for another event, that we would need to get a permit from the Police Department. Great, I agree. I don't want the college kids in there either. That's not what we're about. What we would like to know, though, are a couple of things, like how long something like that would take. So if somebody comes to us and says we want to have a wedding, I can say, okay, sure, but I have to wait six months to get a permit. And I'm sure I'm exaggerating but I'm doing that for a purpose. I would like to tell this engaged couple that they would know within a month or two weeks or whatever. And that certainly doesn't need to be in writing but it's just something that I would be interested in. In conjunction with that, perhaps what exactly requires that permit? If we have a conference room and ABC Company wants to have a Friday afternoon business meeting for 10 people, do I need a permit? I know if I have a wedding, I'm going to need a permit. I got that. But where's the cut-off? So if we could have a little bit of clarification on that. In regard to the hours of operation, you have 10:00 a.m. to 10:00 p.m. I love the 10:00 p.m. In fact, I'm great with that. The 10:00 a.m. is fine on a general basis but I think I would request if there could be a special circumstance for something if we're holding a 5k or we're hosting City clean-up with start and finish being at our brewery, or something like that, we'd want to start that earlier in the morning. So I think keep the 10:00 a.m. to 10:00 p.m. as an everyday rule but if there's a way, under special permit, we could be earlier for special reasons, I think that would be good.

That really is it. If there are any specific questions, I'm happy to help in any way I can. I'm not sure that I can answer them, but I'll do my best. And I just really want to thank you, again, for all your consideration on this. You guys have been really, really great. This is the first time I've done anything entrepreneurial. I'm a CFO by trade. So I'm the one that writes the checks. I'm not the one that is playing the business owner, and it has been . . . honestly, you guys have been great to work with. Maureen has had a very open door and been very willing to talk, and I just appreciate it coming into a business as a new entrepreneur. Thank you.

Mr. Firestone: Thank you very much. Is there is anyone else from the public who would like to speak? Please come forward and identify yourself for the record. Thank you.

Ms. Jean White: Jean White, District 1. I have strong reservations about broadening, one could say weakening, the City of Newark's Codes regarding alcohol. In this case we're talking about micro-breweries, craft distilleries and beer gardens. I am concerned that Newark will further . . . it's becoming a destination point and magnet regarding alcohol and alcohol consumption, more than is already the case. And it is already the case. All we have to do is live here for a while and see all the things that are happening.

It is appropriate for those who want to have alcohol with their meals to go to a restaurant where alcohol is also served, and also there are bars. And I feel it is also appropriate that Iron Hill Brewery which also sells their own brewed things, because that is an accessory to their restaurant. I think that's appropriate. So Iron Hill Brewery, I think, is a feature that is already allowed and should be allowed. I am bothered by the proposal here where these are not accessories to a restaurant.

Now, where I'm coming from for this is, as people in the room probably know, a few years ago Robert Wood Johnson Foundation gave a large grant to six universities in the country who had high, very high, the highest, binge drinking, University of Delaware being one of them. And this was a grant to the University and the City of Newark, and there were committees set up between the University, the City and the townspeople. I was on the Policy and Enforcement Committee, which met in the Police Department for about ten years. During that time I learned a lot about alcohol consumption in Newark. Not just binge drinking, but alcohol in general. A view that I hadn't really appreciated to the extent that I did learn on that. And one of the major emphasis was the importance of having food when alcohol is consumed. And when we have a restaurant, it's in conjunction with the food that is in the restaurant and so on.

It would please me if you on the Planning Commission would reject this whole thing to allow the micro-breweries, the micro-distilleries, et al. If, in fact, you feel that you're unable to do that, I feel that you should, at least, not allow, and therefore reject, the beer garden aspect of it while leaving the other parts of what's there. Here we have people who are sitting in an area not just sampling, not just tasting, not just buying an amount that's been manufactured on a small scale, but sitting and drinking without any restaurant. Yes, there might be some popcorn or there might be something else. But it basically is just people sitting there. I'm actually disturbed to hear that there would be the desire to have 5k races ending up to things or children and families coming. That disturbs me very much. But at any rate, I urge you to eliminate, if you cannot turn down the whole thing, to at least eliminate the beer garden aspect of this. It would be interesting, actually, to know how many major university towns, many of which have severe drinking problems, have beer gardens within their town's jurisdiction. And in terms of having a beer garden where people can make a reservation to be there, obviously you can't keep anyone aged 21 or older out, and so you can say we can't have fraternities and we can't have sororities, but there's nothing to keep a group of anybody, they don't even have to be college students for that matter, but college students is one of our concerns in this town, and I do not think we should be promoting and adding to something that is going to foster greater problems than we might be having already for that.

And finally, I think it is a spurious argument that the reason that one needs to approve this is that one is trying to improve the economic development of the City. I know that applicants will, their point of view will be different. There are many other things that I, as a long-term resident in the City, would like to see in terms of retail and everything. And extending the alcohol, and in particular the beer gardens, is a concern for me and I would hope that you would consider this very seriously, and hopefully take my advice on the matter. Thank you.

Mr. Firestone: Thank you for sharing that perspective with us.

Mr. Fortner: Mr. Chairman, if I could just follow-up with Ms. White. The beer garden is, as I've said, there is no definition for beer garden in State law and there's no regulations for beer garden. The State law would look at a beer garden as either part of the facility or they would look at it as like you see something at the beach with open areas but it's all walled in, or a part of a patio. And so most likely they're going to be part of a patio. Now the City of Newark limits patios to no more than 1,000 square feet and so some of these facilities expressed interest in having potentially a larger outdoor area, so we can't qualify it as a patio, so we built this and called it a beer garden. But it's not a beer garden in a real way like you would have in Germany. You wouldn't be able to serve alcohol outdoors. It would essentially function as a patio. All the same kind of regulations apply except that it would be larger.

Ms. White: But people would be sitting there and drinking there. It would not just be tasting. So what do you call a beer garden?

Mr. Fortner: They would be drinking, yes. They would be outdoors drinking.

Ms. White: There would be drinking and there would not be much food, so I don't get the garden stuff, but it is not a tasting, that type of thing and selling the alcohol. There's a difference.

Mr. Fortner: Yes, there's a difference between a taproom and a restaurant that serves alcohol.

Mr. Firestone: Okay, thank you. That closes the public comment section. Are there other comments from the Commissioners?

Mr. Hurd: Just a quick question sort of related to the college thing. Did you have anything that showed up for Fort Collins, which I know is a university town in Colorado. Did anything show up in their Code that seemed to be addressing these particular issues about student drinking?

Mr. Fortner: No, I think I probably read their definition . . . so they have a definition and they would have had some sort of requirement about zoning districts, but I don't remember anything specific about college students.

Mr. Firestone: How about Asheville, North Carolina, which is also a college town?

Mr. Fortner: Again, I didn't see anything specific referencing college students or anything.

Mr. Silverman: For clarification, I'd like to know a little more about operations and the Alcoholic Beverage Commission requirements. I'm associated with an organization that has a public hall that has a bar. When we rent it out or use it for a 5k run, we're required to have steel shutters locking the bar area and all of our beer vendors, those cases are physically locked and the hard liquor supply cannot be in view. It has to be locked away. So maybe some of this concern about the 5k run being at 7:00 a.m., they could provide coffee but there's no alcohol permitted kind of thing. So I'm not clear on whether we're duplicating things the State already requires or whether we already have answers for some of the questions that are going to come up that are already covered under State law. So just a simple reference to State law in some of these things, particularly with operations, I'm not comfortable with. I think it needs to be fleshed out more, at least in our preamble and our research. It doesn't necessarily have to be listed in Code.

Mr. McIntosh: Mr. Chairman, where are we going with this? I mean are we going to keep talking . . . it's twenty minutes of ten . . . or are we going to come to some conclusion? I thought we were going to have two hour meetings.

Mr. Firestone: It was my objective is to bring it to conclusion hence moving towards the public comment period.

Mr. McIntosh: Good.

Mr. Firestone: I'm just trying to make sure that everyone has an opportunity. Just one quick point of clarification then we can move to the motion, my suggestion on the interference that I suggested was substantial and unreasonable, not substantial or unreasonable. So just a correction there that makes it consistent with private nuisance law.

Mr. Fortner: Okay.

Mr. Firestone: I'm getting the sense that we're likely not ready to move forward as a Commission and I would certainly entertain a motion in that regard.

Mr. McIntosh: So moved.

Ms. Feeney Roser: Well let's talk about that a little bit if you don't mind. I think we've heard a lot tonight about areas where the Commission is uncertain that they're on the same

wavelength as the Planning and Development Department's report. What we could do, if the Commission wishes, we could go back to the drawing board, take some of your comments and come back and discuss it at another meeting, sort of how we did the accessory use amendments. I know that there's interest in moving forward one way or another, but I don't know that based on our conversation tonight, that you're prepared to make a recommendation in either direction at this point. I think we need to flesh it out more for you.

Mr. Firestone: I think that's correct. I think what I'm getting is the sense that we would like you to take consideration of our comments and consideration of comments from the public, and go back and sharpen your pencils, perhaps do a little more research on some of these other areas, and come back with a revised proposal that we will then discuss and consider, then hopefully we'll be ready to take a vote.

Mr. Stozek: I'd like to see it simplified, if possible, and refer back to the Delaware Code, and I think as Alan suggested, some of these requirements can be put in some sort of a table. Something that's easily understandable to the applicant on what they need to do to comply. There's just too many words.

Mr. Silverman: And that whole notion of patio versus indoor . . . I can create a patio type setting in the old Sears building.

Mr. Fortner: A patio is outdoors.

Mr. Silverman: No.

Mr. Fortner: It says open air in the definition.

Mr. Firestone: Anyway I'd like to move towards above . . .

Mr. McIntosh: I was moving something, I'm not sure what it was.

Mr. Firestone: Would you either like to clarify or withdraw and then we can get a clearer motion?

Mr. Silverman: There wasn't a second on that.

Mr. McIntosh: Nobody seconded it. I felt bad about that.

Mr. Hurd: We got confused. Mr. Chairman, I just have a quick sort of question. I have some further comments about the actual text, should I raise them now or should I send them as a note to the Department? What's your pleasure on that?

Mr. Firestone: Why don't you send them as a note to the Department?

Mr. Hurd: Okay. In that case, I guess I second the motion.

Mr. McIntosh: Alright, God love you.

Mr. Firestone: If I understand the motion, it's effectively to refer the matter back to the Planning Department to consider the discussion and public comments. Any discussion on the motion? Hearing none, all in favor, signify by saying Aye. Opposed? Motion carries.

Ms. Feeney Roser: Thank you.

MOTION BY MCINTOSH, SECONDED BY HURD, THAT THE PLANNING COMMISSION REFER THE MATTER OF AMENDMENTS TO THE ZONING CODE AS THEY RELATE TO ALCOHOL PRODUCTION, SALES AND RELATED ACCESSORY USES BACK TO THE PLANNING AND DEVELOPMENT DEPARTMENT FOR FURTHER RESEARCH.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK  
NAY: NONE  
ABSENT: DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

**6. NEW BUSINESS.**

Mr. Firestone: Lastly we have Item 6, New Business. Is there any new business?

Mr. McIntosh: Yes, the Cubs are winning 7 to 0.

Mr. Fortner: Are they really?

Ms. Feeney Roser: Wow, I forgot about the World Series.

Mr. Firestone: Hearing that, is there a motion to adjourn?

Mr. Silverman: So moved.

Mr. Firestone: Second?

Mr. Hurd: Second.

Mr. Firestone: All those in favor, say Aye. Okay, we're adjourned. Thank you.

MOTION BY SILVERMAN, SECONDED BY HURD, THAT THE PLANNING COMMISSION MEETING BE ADJOURNED.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK  
NAY: NONE  
ABSENT: DISTRICT 3 (VACANT)

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 9:53 p.m.

Respectfully submitted,



Alan Silverman  
Planning Commission Secretary

As transcribed by Michelle Vispi  
Planning and Development Department Secretary