

## PLANNING DIVISION STAFF REPORT

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OCTOBER 5, 2016 URBAN DESIGN COMMISSION

OCTOBER 17, 2016 PLAN COMMISSION



**Project Address:** 89 East Towne Mall

**Application Type:** Conditional Use

**Legistar File ID #** [44182](#)

**Prepared By:** Timothy M. Parks, Planning Division  
Report includes comments from other City agencies, as noted.

### Summary

**Applicant & Property Owner:** Justin Long, CBL & Associates Properties, Inc./ Madison Joint Venture; 2030 Hamilton Place Boulevard; Chattanooga, Tennessee.

**Contact Person:** Justin Lee Frahm, JSD Professional Services, Inc. 161 Horizon Drive, Suite 101; Verona.

**Requested Actions:** Consideration of a conditional use to convert and expand a former furniture store into a movie theater, brewpub and restaurant at 89 East Towne Mall.

**Proposal Summary:** The applicant is requesting approval to convert the former Steinhafel's furniture store on the eastern side of East Towne Mall into a "FLIX" movie theater, brewpub and restaurant. The applicant proposes to commence construction of the project in April 2017, with completion anticipated in winter 2018.

[Note: The applicant is also seeking approval of a three-lot Certified Survey Map to combine underlying parcels for the mall complex and to create two lots for existing pad site buildings. Review of the CSM is ongoing, and any conditions of approval shall be provided separately.]

**Applicable Regulations & Standards:** Section 28.137(2)(e) identifies a planned multi-use site containing more than 40,000 square feet of gross floor area and where 25,000 square feet of gross floor area is designed or intended for retail use or for hotel or motel use as a conditional use and be subject to review by the Urban Design Commission under the provisions of Section 33.24(4)(f). Table 28D-2 in Section 28.061 of the Zoning Code identifies theaters/ assembly halls, brewpubs, restaurant-taverns, and outdoor eating areas as permitted uses in the CC (Commercial Center) zoning district. Section 28.183 of the Zoning Code provides the process and standards for the approval of conditional use permits. [The partial demolition of the exterior of the existing furniture store for the project was not considered a demolition subject to review pursuant to Section 28.185 of the Zoning Code because it will not remove more than 50% of the exterior façade of the overall mall building nor a street-facing façade.]

**Review Required By:** Urban Design Commission and Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find the standards met and **approve** a conditional use to allow a former furniture store at 89 East Towne Mall to be converted into a movie theater, brewpub and restaurant following a recommendation by the Urban Design Commission, and subject to input at the public hearing and the conditions from reviewing agencies beginning on page 6 of this report.

## Background Information

**Parcel Location:** The project site is located on the eastern side of the approximately 87-acre East Towne Mall complex generally bounded by Zeier Road on the east, Lien Road on the south, Eagan Road on the west, and East Towne Boulevard and E. Washington Avenue on the north; Aldermanic District 17 (Baldeh); Madison Metropolitan School District. The proposed development will occur on the property owner’s 31.3-acre share of the overall 87-acre complex, which is also comprised of separate parcels owned by Sears, JCPenney, and Boston Store.

**Existing Conditions and Land Use:** The project will occupy space currently occupied by a 28,828 square-foot Steinhafel’s Furniture store, which will be relocating nearby in 2017. Overall, East Towne Mall is comprised of a 788,120 square-foot enclosed shopping mall surrounded by approximately 4,300 surface parking stalls based on information available from the mall operator and applicant. The mall is zoned CC (Commercial Center District).

**Surrounding Land Uses and Zoning:** The area surrounding the mall is also zoned CC (Commercial Center District) and is generally characterized by a number of multi-tenant commercial buildings, pad sites, and other large retail businesses that extend along E. Washington Avenue from Thierer Road to Interstate 39-90-94 as well as east from the mall core towards the interstate along East Springs Drive. The area located southeast of the eastern parking lot of the mall is characterized by a large area of wetland that extend across Zeier Road north of Lien Road.

**Adopted Land Use Plans:** The Comprehensive Plan identifies the subject site and the overall East Towne Mall complex for Regional Mixed-Use and transit-oriented development. The subject site and overall East Towne complex is recommended for commercial uses in the East Towne-Burke Heights Neighborhood Development Plan (1987).

**Zoning Summary:** The site is zoned CC (Commercial Center District):

Requirements	Required	Proposed
Front Yard	100’ maximum	Adequate
Side Yards	5’ for one-story   6’ for two-story	Adequate
Rear Yard	The lesser of 20% of lot depth or 20’	Adequate
Maximum Lot Coverage	85%	Adequate (See Zoning conditions)
Maximum Building Height	5 stories / 68’	1 story
Auto Parking	None required	To be determined (See conditions)
Bike Parking	Restaurant-tavern, brewpub: 5% of capacity (7); Theater: 5% of persons in auditoriums (48) = 55 total	6 (See Zoning conditions)
Loading	0	Existing
Building Forms	Free-Standing Commercial Building	Will comply
<b>Other Critical Zoning Items</b>		
Yes:	Urban Design (Planned Multi-Use Site), Barrier Free, Utility Easements	
No:	Floodplain, Wellhead Protection, Landmarks, Waterfront Development, Adjacent to Park	
<i>Prepared by: Jenny Kirchgatter, Assistant Zoning Administrator</i>		

**Environmental Corridor Status:** The property is not located in a mapped environmental corridor. However, the private parcel containing the wetlands adjacent to the mall parking lot is located in a mapped corridor.

**Public Utilities and Services:** The site is served by a full range of urban services, including seven-day Metro Transit service along East Towne Boulevard, Eagan Road, Zeier Road and a section of the mall outer ring road.

## Project Description

The applicant is requesting approval of a conditional use to replace the existing two-story Steinhafel’s Furniture store at East Towne Mall with a 39,150 square-foot “FLIX” movie theater, brewpub and restaurant. The project site is located on the eastern side of the overall mall core building, with Dick’s Sporting Goods, Gordman’s, and JCPenney to the north, and Boston Store and Sears to the south. The mall’s food court, Barnes and Noble, and Buffalo Wild Wings are located on the opposite side of the mall from the project site. The project site faces east across an adjacent surface parking lot towards an area of wetlands that adjoins the mall properties, with Zeier Road further in the distance. According to the property owner, there are approximately 4,300 parking stalls serving the 87-acre mall site.

The proposed movie theater, brewpub and restaurant will include nine auditoriums with seating for 970 per the letter of intent, with a separate space for dining containing 134 interior seats. An outdoor eating area is proposed along the south wall of the building adjacent to an exterior entrance into the facility that will face south. A new east-facing mall entrance will be constructed adjacent to the FLIX entrance, which will connect to the east-west internal mall corridor. The theater/ brewpub/ restaurant complex will also have an entrance from the interior of the mall. The hours of operation for the movie theater, brewpub and restaurant will be 9:00 AM until 2:00 AM daily.

The 39,150 square-foot building will be a combination of new construction and repurposed existing square-footage. The building will be a tall one-story structure, with stadium-style seating in at least eight of the nine auditoriums. The exterior will be clad in two-toned brick with a contrasting EIFS cap. The southern façade of the entertainment complex and easterly wall of the mall where the new entrance is proposed will feature prominent glass elements and projecting vertical elements, while the eastern and northern facades where the exterior walls of the theater auditoriums are proposed will include no openings and a modest degree of articulation.

As part of the implementation of the project, the applicant will make incremental improvements to the parking area on their property located east of the proposed entertainment complex (some of the adjacent parking, while part of the greater mall, is located on land owned by the adjacent Boston Store). Those improvements include the installation of landscaping islands in the parking lot at approximately ten-space intervals and new pole-mounted metal halide luminaires.

## Analysis and Conclusion

The Planning Division believes that the movie theater, brewpub and restaurant addition to the eastern side of East Towne Mall represents a well-designed entertainment facility that will expand the offerings available at the mall beyond the current predominance of retail uses, and which should increase the level of activity on the less publicly visible and more remote east side of the mall complex. Staff feels that the proposed building and site improvements satisfy the requirements of Section 33.24(4)(f) as they apply to a non-retail addition to East Towne Mall to “seek improvements” to existing large retail establishments in this case by upgrading landscaping

in this portion of the mall complex, particularly in the eastern parking field, and making modest improvements to pedestrian circulation by infilling sections of perimeter walks where they do not consistently exist.

Staff believes that the proposed conditional use can meet the standards for approval subject to the comments and conditions in the following section. Of greatest potential consequence among those agency comments, Metro Transit has expressed concerns about the hours of the proposed entertainment complex compared to the hours that the indoor mall is open, which Metro staff feels will affect how FLIX customers and employees are able to access transit service, which is most closely located west of the *western* side of the mall on the outer mall ring road and East Towne Boulevard. The most direct connection to the on-site bus stop west of the mall from the eastern side of the complex is through the mall, which has hours of operation that are shorter than the proposed hours of operation for the theater/ brewpub/ restaurant. In other words, transit users on the east side of the mall may be cut off from the most direct means of access to bus service while Metro is still operating because the indoor portion of the mall is closed. Metro has submitted conditions asking that the applicant identify the pedestrian connection that would be available between FLIX and the existing East Towne Mall bus stop during the hours between when the mall is closed (6:00 PM or 9:00 PM) and the hours of the proposed use (2:00 AM). In order for the Plan Commission to find that adequate internal circulation improvements, including but not limited to vehicular, *pedestrian*, bicycle, and *public transit* have been or are being provided pursuant to conditional use standard #5 (*emphasis added*), the applicant should address the transit access concern raised by Metro Transit in its comments and conditions.

## Recommendation

### Planning Division Recommendation (Contact Timothy M. Parks, 261-9632)

The Planning Division recommends that the Plan Commission find the standards met and **approve** a conditional use to allow a former furniture store at 89 East Towne Mall to be converted into a movie theater, brewpub and restaurant following a recommendation by the Urban Design Commission, and subject to input at the public hearing, the following Planning Division condition(s), and the conditions from reviewing agencies:

### Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

#### Planning Division

1. The final site and landscaping plan sheets shall be revised to clearly show all existing and proposed parking stalls, landscaped islands, walkways and access roads in the area of the proposed redevelopment (Sheets C200, C201 and C202, and L100 and L101). It is recommended that the existing and proposed utilities be highlighted on Sheets C300 and C301 to allow for greater clarity on the site plan sheets. The revised sheets shall include dimensions of the aforementioned features. Final approval of the revised civil plan sheets by the Planning Division will be required prior to issuance of permits for the project.
2. The final plans shall be revised to label the elevations and renderings (Sheet A2.1, SCH 1.1–1.3) by direction prior to final plan approval and issuance of permits for the project. The elevations shall also note the height of the proposed building.
3. The floorplans of the FLIX movie theater, brewpub and restaurant shall be labeled to identify the areas devoted to each of those uses, any kitchen or storage areas within the building, and the approximate capacity of each auditorium.

4. All sidewalks adjacent to the FLIX building shall be a minimum of eight (8) feet wide per Section 33.24(4)(f)7.

**The following conditions have been submitted by reviewing agencies:**

**City Engineering Division** (Contact Brenda Stanley, 261-9127)

5. The developer will be required to build public sanitary sewer around the proposed building unless sewer is to be privately owned. If it is to be private, an ownership/ maintenance agreement would be required.
6. Prior to final approval of the demolition permit, the owner shall obtain a permit to plug each existing sanitary sewer and/ or storm sewer lateral that serves a building that is proposed for demolition. Prior to approval, the owner or owner's representative shall obtain a permit to plug each existing lateral that serves a building which is proposed for demolition. For each lateral to be plugged, the owner shall complete a sewer lateral plugging application and pay the applicable permit fees.
7. All outstanding Madison Metropolitan Sewerage District (MMSD) are due and payable prior to City Engineering sign-off, unless otherwise collected with a Developer's/ Subdivision Contract. Contact Mark Moder (261-9250) to obtain the final MMSD billing a minimum of 2 working days prior to requesting City Engineering signoff.
8. The site plan shall be revised to show all existing public sanitary sewer facilities in the project area as well as the size, invert elevation, and alignment of the proposed service.
9. This project appears to have proposed uses which could require sanitary sewer demand charges or monitoring of the discharge of sanitary sewerage. The applicant shall install a monitoring manhole on the exterior of the building in compliance with City of Madison Engineering criteria. Contact the City Engineer to determine appropriate location and specifications for said monitoring manhole.
10. The applicant shall dedicate a 15-foot wide sanitary sewer easement for proposed sewer around building as a condition of plan approval.
11. The construction of this project will require that the applicant shall enter into a City / Developer agreement for the required infrastructure improvements. The applicant shall contact City Engineering to schedule the development of the plans and the agreement. The City Engineer will not sign off on this project without the agreement executed by the developer. Note: Obtaining a developer's agreement generally takes approximately 4-6 weeks, minimum.
12. This project falls in the Rock River TMDL Zone and is subject to increased erosion control enforcement as authorized by Resolution 14-00043 passed by the Common Council on January 21, 2014. The project will be expected to meet a higher standard of erosion control than the minimum standards set by the Wisconsin Department Natural Resources (WDNR).
13. The applicant shall submit, prior to plan sign-off, a digital CAD file (single file) to the City Engineering Division (Storm/Sanitary Section). The digital CAD file shall be to scale and represent final construction. The CAD file shall be in a designated coordinate system (preferably Dane County WISCRS, US Ft). The single CAD file submittal can be either AutoCAD (dwg) Version 2013 or older, MicroStation (dgn) V8i Select Series 3 or

older, or Universal (dxf) format and shall contain the only the following data, each on a separate layer name/level number. The digital copies shall be drawn to scale and represent final construction including: building footprints; internal walkway areas; internal site parking areas; other miscellaneous impervious areas (i.e. gravel, crushed stone, bituminous/asphalt, concrete, etc.); right-of-way lines (public and private); plat name and lot lines (metes & bounds parcel lines if unplatted); platted lot numbers (noted “unplatted lands” if not platted); lot/plat property dimensions; street names; private on-site sanitary sewer utilities (including all connections to public sanitary); private on-site storm sewer utilities (including all connections to public storm). The CAD file will only be required prior to final plan review so that multiple files do not need to be supplied or reviewed. The party responsible for the CAD file e-mail transmission shall include the project site address in the email subject line. Any changes or additions to the location of the building, private utilities, sidewalks, parking/pavement during construction will require a new CAD file transmittal.

14. The applicant shall submit, prior to plan sign-off but after all revisions have been completed, digital PDF files to the Engineering Division. Email PDF file transmissions are preferred to: [bstanley@cityofmadison.com](mailto:bstanley@cityofmadison.com) (East) or [tstroester@cityofmadison.com](mailto:tstroester@cityofmadison.com) (West). The digital copies shall be to scale, and shall have a scale bar on the plan set. pdf submittals shall contain the following information: a) building footprints; b) internal walkway areas; c) internal site parking areas; d) other miscellaneous impervious areas (i.e. gravel, crushed stone, bituminous/ asphalt, concrete, etc.); e) right-of-way lines (public and private); f) lot lines or parcel lines if unplatted; g) lot numbers or the words unplatted; h) lot/plat dimensions; i) street names; j) stormwater management facilities, and; k) detail drawings associated with stormwater management facilities (including if applicable planting plans).
15. The applicant shall submit prior to plan sign-off, electronic copies of any Stormwater Management Files including: a) SLAMM DAT files; b) RECARGA files; c) TR-55/HYDROCAD/Etc; d) Sediment loading calculations. If calculations are done by hand or are not available electronically the hand copies or printed output shall be scanned to a PDF file and provided.
16. Submit a draft Stormwater Management Maintenance Agreement (SWMA) for review and approval that covers inspection and maintenance requirements for any BMP used to meet stormwater management requirements on this project. Include copies of all stormwater, utility, and detail plan sheets that contain stormwater practices on 8.5x14 size paper in the draft document. These drawings do not need to be to scale as they are for informational purposes only. Once City Engineering staff have reviewed the draft document and approved it with any required revisions submit a signed and notarized original copy to City Engineering. Include a check for \$30.00 made out to Dane County Register of Deeds for the recording fee. City Engineering will forward the document and fee for recording at the time of issuance of the stormwater management permit. Draft document can be emailed to Tim Troester (west) at [tstroester@cityofmadison.com](mailto:tstroester@cityofmadison.com), or Jeff Benedict at [jbenedict@cityofmadison.com](mailto:jbenedict@cityofmadison.com) final document and fee should be submitted to City Engineering.
17. The applicant shall demonstrate compliance with Section 37.07 and 37.08 of the Madison General Ordinances regarding permissible soil loss rates. The erosion control plan shall include Universal Soil Loss Equation (USLE) computations for the construction period. Measures shall be implemented in order to maintain a soil loss rate below 5.0-tons per acre per year.
18. This site appears to disturb over 1 acre of land and requires a permit from the Wisconsin Department of Natural Resources (WDNR) for stormwater management and erosion control. The City of Madison has been required by the WDNR to review projects for compliance with NR-216 and NR-151; however, a separate permit submittal is still required to the WDNR for this work. The City of Madison cannot issue our permit

until concurrence is obtained from the WDNR via their NOI or WRAPP permit process. Contact Eric Rortved of the WDNR at 273-5612 to discuss this requirement.

19. Prior to approval, this project shall comply with Chapter 37 of the Madison General Ordinances regarding stormwater management. Specifically, this development is required to reduce TSS by 80% off of the proposed development when compared with the existing site.
20. Complete an erosion control plan and complete weekly self-inspection of the erosion control practices and post these inspections to the City of Madison website as required by Chapter 37 of Madison General Ordinances.

**City Engineering Division – Mapping Section** (Contact Jeff Quamme, 266-4097)

21. The Public Water Main Easement, Branch 1, per Document No. 1432746 shall be amended to encompass the location of the re-routed public water main due to this project. Map Exhibit and legal description along with a \$500 fee for administrative costs shall be provided to Jeff Quamme of Engineering Mapping. A City of Madison Real Estate Project shall be set up to administer and record the easement.
22. The Public Sanitary Sewer Easement No. 5, per Document No. 1313067 shall be amended to encompass the location of the re-routed public sanitary sewer due to this project. Map Exhibit and legal description along with a \$500 fee for administrative costs shall be provided to Jeff Quamme of Engineering Mapping. A City of Madison Real Estate Project shall be set up to administer and record the easement.

23. FLIX shall continue to use the tenant space address of 85 East Towne Mall. The site plan shall reflect a proper street address of the property as reflected by official City of Madison Assessor's and Engineering Division records.

**Traffic Engineering Division** (Contact Eric Halvorson, 266-6527)

24. The applicant shall submit one contiguous plan for approval. The plan drawing shall be scaled to 1" = 20' and include the following, when applicable: existing and proposed property lines; parcel addresses; all easements; pavement markings; signing; building placement; items in the terrace such as signs, street light poles, hydrants; surface types such as asphalt, concrete, grass, sidewalk; driveway approaches, including those adjacent to and across street from the project lot location; parking stall dimensions, including two (2) feet of vehicle overhang; drive aisle dimensions; semitrailer movement and vehicle routes; dimensions of radii; and percent of slope.
25. The City Traffic Engineer may require public signing and marking related to the development; the developer shall be financially responsible for such signing and marking.
26. All parking facility design shall conform to the standards in MGO Section 10.08(6).

**Metro Transit** (Contact Tim Sobota, 261-4289)

27. The applicant shall identify or confirm the accessible pedestrian connection that would be available between the proposed development site and the existing East Towne Mall bus stop zone (outside the Food Court

entrance) specifically during the hours between after the Mall itself has closed (6:00 PM or 9:00 PM) and the extended hours of the proposed use (2:00 AM). [See attached notes on context map sheet]

28. The applicant shall include these bus stop pedestrian access improvements on the final documents filed with their permit application so that Metro Transit may review and approve the design (i.e. accommodations that would maintain direct access through the interior of Mall towards the Food Court entrance after closing; parcel improvements linking the proposed use across the adjacent retail site frontages around to the bus stop zone; or parcel improvements to/from existing public street frontages that would give indirect access around to the bus stop zone).

**Zoning Administrator** (Contact Jenny Kirchgatter, 266-4429)

29. Submit a complete site information block with the final plan submittal including the numbers of existing and proposed parking stalls, number of accessible stalls, number of bicycle parking stalls, and amount of existing and proposed impervious areas.
30. Provide a calculation of the existing and proposed lot coverage for the development parcel. The lot coverage maximum is 85%. Lot coverage is defined as the total area of all buildings, measured at grade, all accessory structures including pools, patios, etc., and all paved areas as a percentage of the total area of the lot, with the following exceptions: sidewalks or paved paths no wider than five (5) feet, pervious pavement, green roofs and decks. If the development parcel currently exceeds the lot coverage maximum, the proposed site changes cannot further increase the amount of impervious surfaces on the site.
31. Bicycle parking shall comply with the requirements of Sections 28.141(4)(g) and 28.141(11). Provide a minimum number of bicycle stalls equal to 5% of the capacity of persons for the brewpub and theater uses (55 stalls). The short-term bicycle parking stalls shall be located in a convenient and visible area on a paved or impervious surface. Bicycle parking shall be located at least as close as the closest non-accessible automobile parking and within 100 feet of a principal entrance. Note: A bicycle stall is a minimum two (2) feet by six (6) feet with a five (5)-foot wide access area. Provide a detail of the proposed bike rack.
32. Submit the landscape plan and landscape worksheet stamped by the registered landscape architect. Per Section 28.142(3) Landscape Plan and Design Standards, landscape plans for zoning lots greater than 10,000 square feet in size must be prepared by a registered landscape architect. The landscape points requirement shall be calculated as follows: five (5) landscape points shall be provided for each 300 square feet of developed area.
33. Provide details showing that the landscape islands contain a minimum of 75% vegetative cover. Per Sections 28.142(3)(c) and 28.142(4)(e), planting beds or planted areas must contain at least 75% vegetative cover mulched. Mulch shall consist of shredded bark, chipped wood or other organic material installed at a minimum depth of two (2) inches.
34. Submit a rooftop plan showing the location of any proposed rooftop mechanical equipment and screening. All rooftop equipment shall be screened from view from adjacent streets and public rights-of-way per Sections 28.060(2)(f) and 28.142(9)(d). The equipment shall be within an enclosure. Screens shall be of durable, permanent materials that are compatible with the primary building materials and constructed to a height of at least one (1) foot above the height of the equipment.



35. On the site plan, show the existing or altered service court and loading dock areas adjacent to the development site.
36. Provide a detail of the outdoor eating area with a layout of the tables and chairs.
37. The capacity shall be established for the outdoor eating area. Occupancy is established by the Building Inspection Division. Contact the Building Inspection Division at (608)266-4559 to help facilitate this process.
38. Per Section 28.186(4)(b), the property owner or operator is required to bring the property into compliance with all elements of the approved site plans by the date established by the Zoning Administrator as part of the site and building plan approval. Work with Zoning staff to establish a final site compliance date.
39. Signage approvals are not granted by the Plan Commission. Signage must be reviewed for compliance with Chapter 31 Sign Codes of the Madison General Ordinances and Chapter 33 Urban Design ordinances. Signage permits are issued by the Zoning Section of the Department of Planning and Community and Economic Development.

**Fire Department** (Contact Bill Sullivan, 261-9658)

40. Coordinate an updated addressing plan for this portion of the site with City of Madison Engineering.

41. All new and remodeled areas shall comply with the requirements of a covered mall as required by the current State Building Code (IBC 2009).

**Water Utility** (Contact Adam Wiederhoeft, 266-9121)

42. The proposed hydrant relocations shall also include relocation of the existing hydrant lead valves (not currently shown on plans). Contact Madison Water Utility prior to relocation of hydrant located north of proposed development to have a replacement hydrant furnished. Public water main easements shall be updated to reflect the proposed hydrant relocations.

43. The proposed water main re-route around the proposed building shall be 12-inch diameter main and include replacement service valves to the existing 8-inch service (to the west) and the existing 10-inch service (to the north). The proposed new 3-inch service shall be reduced from 4-inch beyond the new 4-inch service valve. The public water mains shall be laid at least 8-feet horizontally clear of any storm or sanitary sewer lines. Public water main easements shall be updated to reflect the proposed 12-inch water main re-route and all service valves shall be contained within the public water main easement.

44. The Madison Water Utility shall be notified to remove the water meter prior to beginning any demolition of the existing structure.

**Parks Division/ City Forestry** (Contact Janet Schmidt, 261-9688)

This agency reviewed this request and has recommended no conditions of approval.

**Note: The conditions of approval for the related three-lot Certified Survey Map will be provided separately.**