

**CITY OF ELIZABETH CITY
PLANNING COMMISSION
REGULAR MEETING**
Tuesday, November 1, 2016
4:00 PM

MEMBERS PRESENT

Ernest Sutton, Chairman
Carlton O'Neal
Suzanne Stallings
Gary White

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner; Dawn Harris, Secretary to the Board; and applicant.

Chairman Sutton called the meeting to order and stated that there was a quorum. Chairman Sutton asked for a motion to approve the agenda as presented for tonight's meeting. Mr. White made a motion to **APPROVE** the agenda as written for the November 1, 2016 meeting. Mr. O'Neal seconded the motion. ***ALL IN FAVOR: SUTTON, O'NEAL, STALLINGS, and WHITE. NONE OPPOSED. MOTION PASSED.***

Chairman Sutton asked for a motion to approve the minutes from the October 4, 2016 meeting. Mr. White made a motion to **APPROVE** the minutes as read from the October, 2016 Planning Commission meeting. Mr. O'Neal seconded the motion. ***ALL IN FAVOR: SUTTON, O'NEAL, STALLING and WHITE. NONE OPPOSED. MOTION PASSED.***

Chairman Sutton asked for Ms. Harris to read the Statement of Disclosure as follows. Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Planning Commission who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Commission shall publicly disclose on the record of the Commission the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Commission pursuant to G.S. 160A-75.

Tonight's New Business is **CASE NO.: TA 01-16**—presented by the City of Elizabeth City. A request to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions; Article IX Zoning; and Article XI Development Standards, adding language to define and regulate brewpubs and microbreweries in the Central Business District. Ms. Alcock gave the following report.

STAFF REPORT

TA 01-16 is a proposal to amend the Unified Development Ordinance, specifically Articles 2, 9, and 11 to allow for the operation of microbreweries within the City Limits. The text amendment comes to before the Commission after City Staff has received several requests to operate such facilities, particularly within the downtown area. Since the current Ordinance is silent on this type of operation, such requests, although economically desirable, would have to be denied. City Council was presented a draft amendment at their work session in September. After taking into consideration Council's comments, Staff now presents to you a more concise version that allows greater flexibility to potential business owners while still ensuring compatibility with surrounding land uses. A staff report detailing the amendment as well as supplemental documentation has been provided to the Commission. As such I will only touch on one aspect of the amendment, the live entertainment provision proposed to be included in Article 11. It is the City's experience that businesses that provide live music as an accessory use have the tendency to morph into a nightclub type situation which in the past has resulted in disturbance calls, noise complaints and the like. In an effort to curtail such negative externalities staff is proposing the regulation to ensure compatibility between the mixes of land uses downtown, notably commercial and residential uses. When drafting the amendment, Staff consulted with numerous planning departments throughout North Carolina, Southeastern Virginia, and a few throughout the country. While only a few have similar provisions regarding live music, a large portion do have separation requirements between microbreweries and residential uses or zones, which in effect eliminates any incompatibility issue. As was explained in the staff report, use separations were not included in the current amendment since doing so would significantly limit the number of permissible locations for hopeful microbrewery owners. To quickly summarize localities that place restrictions on live entertainment include:

- Cornelius, North Carolina: no outdoor amplified sound after 11pm;
- Virginia Beach, Virginia: live music only permitted inside; doors and windows must remain closed during performances except to allow for ingress and egress for patrons and employees;
- Chesapeake, Virginia: currently working through a similar issue, currently considering ceasing all outdoor music at 8pm and limiting indoor music that proceeds past 8pm to require all doors remain closed except to allow for ingress and egress;
- Goodyear, Arizona: live music only permitted if a minimum of 300 feet from a residential zone or use; music/entertainment area should be no more than 25% of the gross floor area of the establishment.

Staff will note that if the Commission deems live music appropriate for such establishments, it is a requirement of the Fire Code that the building be sprinkled. As a reminder, the decision tonight is simply a recommendation to the City Council who must still call for and hold a public meeting prior to making a final determination.

This concluded the report.

Chairman Sutton asked for Ms. Blair Jackson to come forward. She stated that she is here tonight of concern over the stipulation that Ms. Alcock just talked about. She stated that she believes that there is a misconception about the nature of a microbrewery or Nano brewery. Although they do not plan to have live music on a regular occasion, they do not want to be limited not to have an acoustic guitar player or something of the sorts. It is their hope that they

will be working with all businesses in other areas of downtown. Ms. Jackson stated that it is their vision to have members of the arts community, the other brewery, the other restaurants--it would be a source of entertainment in many ways not to be limited to having live music on occasion and perhaps other entertainment. She stated that she doesn't know of another business that has these restrictions imposed upon them. There are many businesses downtown that have had live music and entertainment including the bookstore. It doesn't even have to be a bar. The microbrewery concept is not a nightclub concept. It never has been and certainly that is not what they envision it to be downtown. They want an upbeat and friendly walking environment where people can leave the arts council on a Friday night and walk down to the alleyway and have an opening to their business down the alleyway. She stated that she is the owner of Shingle Landing which is the property owner where the microbrewery/Nano brewery that hopes to be operating in there. They are under lease with a young couple. This is all part of growth and excitement and the atmosphere that they would like to encourage young people to come back downtown, they want to encourage the boaters to think that this is the Harbor of Hospitality. There is a lot you can do with live entertainment that is not blow out---a lot of amps. She stated that they are not looking for that type of entertainment and their space doesn't even allow for that.

Mr. White asked Ms. Jackson what her opposition was in the proposed text amendment. Ms. Jackson stated that they would like to be able to have live entertainment on occasion. Mr. White asked after 8:00 PM. Ms. Jackson stated after 8 o'clock. Ms. Alcock stated that it is just a provision to prohibit live entertainment. Ms. Jackson stated at any time. She stated that it is her observation that people who tend to gravitate to live in a downtown setting like the atmosphere of a downtown setting. It is a vibrant where it's happening kind of community. You don't choose to live downtown and think you are going to have a bucolic life all the time. It is exciting to live downtown, particularly on a Friday night. She stated that she didn't know if the Commission had been to Art walk and she hoped they have. She stated that there are things happening down there and to limit the brewpubs from having any type live entertainment is just, too restrictive. Ms. Jackson stated that is her opposition.

Chairman Sutton called Mr. Mike Hindenach forward. Mr. Hindenach is the President of the Elizabeth City Area Chamber of Commerce. He stated that his Executive Board looked the amendment over this morning and they wanted to at least state their position. He stated that their concerns are from the complete ban of live entertainment as outlined in number six of the amendment. They do believe that live entertainment for these types of venues to be appropriate; however, they are concerned that if you just strike out item number six that it becomes wide open and becomes a way to circumvent nightclub type zoning. Mr. Hindenach stated that it is their request to make the live entertainment stipulation for a special event use type permit so these items can be looked at on a case by case manner--going through due process and opening the door if someone wants to provide live entertainment in a microbrewery.

Chairman Sutton asked Mr. Hindenach to elaborate on the "due process." Mr. Hindenach stated that he believes for nightclubs it is already in place what is expected and how they are expected to perform. He stated that if a brewpub is acting as a nightclub, that he would think that the special use and zoning ordinance is already in place so it would be consistent. They don't want it to be an ordinance that allows you to circumvent another ordinance.

Chairman Sutton called Mr. Dean Schaan forward. Mr. Schaan is the managing partner of ECBC, LLC known as Elizabeth City Brewing Company. He stated that they are owners of 113 Water Street. The property is known as the new Fowler building. It is their vision to turn the Fowler building into a state-of-the-art microbrewery. They are as excited to restore one of Elizabeth City's historical buildings as they are in providing a local brewery to the downtown central business district in the hopes of providing stimulus to the growth and economic revitalization of downtown. Mr. Schaan stated that they understand that this revitalization of downtown will rely on local businesses and the City working together. He stated that he is thankful to provide input on the brewery text for the UDO; however, he has been disappointed in some of the inserts of regulations that the City has added. Fortunately, the food sales language was reevaluated and removed; however, they are disappointed to see further restrictions now stating no live entertainment. This type of language is severely limiting to an industry that revolves around providing a highly customized craft to its customers. The language of no live entertainment to them is unresearched, unexplored and is a large, broad stroke of a brush designed to ban problematic behavior of children that has been allowed to misbehave in the past. To ban all entertainment for this newly proposed classification of businesses--microbreweries--is based only on past experiences of bars and nightclubs and has no merit and shows how little is actually known about the proposed microbrewery classification industry and clientele. The zoning practice of no live entertainment is not listed as written in other city ordinances for microbreweries that they have been able to find and is not recommended from the APA [American Planning Association] on microbrewery practices. Mr. Schaan stated that over the years his in-depth involvement with local arts has allowed him to build relationships and support for their brewery. He stated that this requirement will stop dead in its tracks any collaboration or interaction with local artist. This form of censorship "no live entertainment" sweeps broad and deep into the craft of the performing artist by not allowing them a venue to perform their trade in a downtown that relies heavily on the arts. Limiting a craft brewery the option to involve and invite local musicians, artist and performers to perform on first Friday or any other day is counterproductive and not inclusively working together in this Harbor of Hospitality. Mr. Schaan stated that he cannot control future establishments or businesses, but the future of Elizabeth City Brewing Company will rely heavily on the connections with the arts and live entertainment. He stated that their business, reputation and success will rely on this magical and creative entertainment component much like the beer that they will brew. He asked for the Commission to please not limit their creativity, productivity and downtown arts connections and collaborations by broad stroking an unmerited regulation.

Chairman Sutton asked for questions from the Commission. Mr. White stated that there seems to be a common denominator here. There were no questions. Mr. Sutton called Thomas Reese forward. Mr. Reese stated that he is the president of Ghost Harbor Brewing Company. Mr. Reese is looking to open in the building that George and Blair Jackson own. He stated that much of what he feels Mr. Schaan has already brought up and so has Ms. Jackson. He stated that he wanted to make a couple of points regarding microbreweries and the market that they cater to and the industry as a whole. He stated that depending on the style of beer that they would be making can take anywhere from two weeks to two years to produce. It takes passion to be able to do that. Micro and Nano breweries open up based on that passion. It's a lot of work; they start small and grow with the community. He stated that they really rely on the arts of the community. Brewing is an art if done right just as much as cooking or making fine wine. It is an art. Local artist like to perform in a place that is known to bring new and exciting products to the

market. He stated that in September when they were here there were several pictures shown of nice microbreweries. They had nice equipment. The places were beautiful and he stated that is what he aspires to be. He stated that those places started out as a very small organic probably homebrewer who had a passion for it and wanted to bring to the community share it. High quality craft beer was initially going to be Mr. Reese's draw but the more he looked into it and going to the Rhythm and Brews festival here he saw how much people enjoyed the combination of craft beer and live entertainment. It felt like it would be doing his customers a disservice to not offer live entertainment to them. He stated that live entertainment was important to them before but is even more important now. He feels for the City, customers and themselves that it would be a nice thing to be able to allow. A guy playing an acoustic guitar in the corner as you are enjoying a fine craft beer. He stated that it just fits.

Mr. White asked what Mr. Reese's previous history was. Mr. Reese stated that he currently works for Sunbelt Rentals. They are a heavy equipment company and he manages the branch in Chesapeake and he is an avid homebrewer. He stated that he has been home brewing beer for several years. Mr. White asked if this was his first effort at establishing a commercial brewery. Mr. Reese stated yes. He stated that it is that this is not something he would tread into without a significant amount of research. He also has friends in the business. He stated that it is a large community. They have online communities and they share and help each other.

Mr. O'Neal asked Mr. Reese if he would say that live entertainment is the number one thing that he must have along with the brewery. Mr. Reese stated that he would not say it is the number one thing he must have. He stated that for breweries the draw is fine craft beer. That's why people are coming in. The entertainment for him would be just that--entertainment for the customer. He stated that he is not talking about pyrotechnics, dance floor, etc. The community around craft brewing is not about that. He wants to be able to offer his customers more as well as the artist and community.

Chairman Sutton asked Mr. Reese would he recommend a noise ordinance requirement. Mr. Reese stated that if he is not mistaken there is already a statement that reads along the lines of no noises, odors...Mr. White read the ordinance. Chairman Sutton stated that he knows the ordinance but is asking the question of Mr. Reese. Mr. Reese stated that it is really tough to say. He stated that he thinks there has to be something in place. You wouldn't want to have speakers outdoors at 11:00 at night. He stated that most of them are planning to shutdown at 10:00. He stated that nothing goes on good after 10 o'clock. He feels that something of control should be in place but a blanket statement of no live entertainment is what they had an issue with. He stated that the reason he brought up the noise ordinance is that anything they would do that exceeds normal noise in the downtown area would be covered by that ordinance.

Mr. White asked if the current City Ordinance regarding noise was available at this moment. Ms. Alcock stated yes. He asked if she could read it for him. Ms. Alcock stated that it is 10 pages long. Mr. White said for her to tell him what applies here. Ms. Alcock read a portion in regards to instruments and sound amplifiers as follows: "The playing any musical instrument or electric sound amplification equipment in such a manner or with such volume particularly during the hours between 11:00 PM and 7:00 AM that would unreasonably disturb persons of ordinary and reasonable sensibility in the vicinity is unlawful." Mr. White stated that we already have a City Ordinance that speaks to that. Ms. Alcock stated yes, that is right. That is part of the City

Code. There is also a breakdown in terms of the permitted decibels. Mr. White asked if the proposal for 11.4.50.1 was a proposal by Staff. Ms. Alcock stated yes, the entire amendment was developed by Staff. Mr. White asked if the City Manager had seen the amendment. Ms. Alcock stated yes and he has signed up to speak tonight.

Ms. Stallings stated that they have different categories right now. There is microbrewery, brewpub, and Nano brewery. She stated she would like to know the difference. Ms. Alcock stated that Staff had originally presented at work session brewpub and microbreweries. In the research there was a different focus on food sale. Following City Council work session it was decided to use microbrewery. There are slight differences depending on what you look at. The City will just have microbreweries.

Chairman Sutton called Mr. Wayne Harris forward. Mr. Harris is the Director of the Elizabeth City/Pasquotank County Economic Development Commission. He stated that he was here tonight just to share his understanding of the economics of downtown revitalization. As it relates to brewpubs; this is not something that his commission has had a chance to take a position on. Mr. Harris stated that one thing the Commission should be aware of is that brewpubs/microbreweries have become a quality of life marker for dynamic companies when they are looking to move somewhere. Particularly, if they are going to be trying to attract younger employees. He stated that they may recall the disappointment in Edenton when the microbrewery for the old ice house was not approved. Microbreweries are a little bit of a manufacturing operation in addition to a retail operation. So, the average pay is much better than you get in a downtown establishment. One of the difficulties in downtown revitalization is that many economic development grants are tied to wage levels that downtown cannot afford to pay. The DIG grant does not do that and some of the building reuse grants in theory does not do that. But in more recent months they have had a tendency to favor higher wage industry. In the Asheville area brewpubs have become a huge driver for the downtown economy. They pay much better than bars and nightclubs. In Asheville the average pay of the lowest pay for establishment that offer health insurance is \$11.50 an hour. If they don't offer insurance the pay is \$12.50 hour according to a recent survey. State level average pay is \$45,000 per year. Mr. Harris stated that this is a very unique industry that allows an establishment in the downtown area pay a higher wage than most. In looking at Asheville's survey of the brewpub market, at least 10 of the brewpubs offer entertainment in addition to craft beer. He stated that he did not have time to verify how many of them do more than 30% of food. Clearly as identified having a low decibel entertainment is a huge enhancement to the overall experience. Mr. Harris asked the Commission to consider a way to distinguish between potential nuisances and potential economic development enhancements like this.

There was some discussion of having Mr. Harris' Board weigh in on this amendment; however, Mr. Olson pointed out that it would be a conflict of interest as some of the Board members are City Councilman and the Council will be making the final decision on this amendment.

Chairman Sutton stated that the Commission wants to make sure that they have a fair and broad view because they are concerned with developing the downtown. But, at the same time they want to make sure they protect the integrity of the downtown.

Mr. Olson came forward to speak. He stated that Staff is facing a dilemma here in how do we differentiate between a microbrewery, Nano brewery and a nightclub. It is very, very hard to do. There are businesses in town that say they are going to operate one way when in actuality when the purses start going dry they start doing things that they are not permitted for and that is the concern we have. He stated that he is not saying anyone here involved would do that but it is the reality of the situation. The other reality is when you have liquor and live entertainment the police department is called for services is increased dramatically. With that being said, usually that increase for service happens about 1:00 to 2:00 in the morning. Staff is trying to do a balancing act. Mr. Olson stated that personally he doesn't think that the Planning Director has a problem with certain live entertainment to be held at these locations. He stated that they have all been to microbreweries where an acoustic guitar is playing or a piano playing. That is a very nice atmosphere, but how do you stop that from morphing into having a three or four piece band playing until 2:00 in the morning? He stated that is the dilemma Staff is facing here when deciding to restrict live entertainment. For the balancing act, the Planning Commission could request that hours of operation be limited of microbreweries to 10:00 or 10:30 at night. As someone testified earlier, nothing good ever happens after 10:00 at night. Mr. Olson stated that he would agree. The City's calls for service go up greatly after 10:00 PM. He stated that he doesn't think that most microbreweries want to stay open until 1:00 or 2:00 in the morning. That's usually not the kind of clientele they want in their place. They want people to come in and enjoy the night and leave at a reasonable hour. Most of these individuals have other jobs that they do and it is a passion for them. It could also be required that they cannot charge a cover charge. If you are going to have a band they usually cost \$500 to \$1,000. By limiting them to not charging a cover charge it limit them being able to bring a band in. Having a person sitting there playing a guitar or piano or maybe even karaoke night there is not a major issue with that as long as it is done in good taste. Mr. Olson stated that they have gotten rid of the restaurant requirement. He stated that he is a firm believer if you serve alcohol you should have food; but that was taken out during the preliminary discussion with City Council. Now they keep adding things in--they are stopping the differentiating of the nightclub from the microbrewery. He stated that he did not believe anyone here wants to run a nightclub. That's not their intent. Also, the fire code is very specific. When you run a nightclub you have to have it sprinkled. With live entertainment, after the tragedy in Rhode Island about 10 years ago where 151 people died in a nightclub fire all these places have to be sprinkled. With that being said, it is a lot easier to sprinkle them while being constructed or renovating than to have to do it after the fact. The ordinance that City Staff has drafted is a good ordinance. They did take it to City Council and they did get the City Council's blessing for most of the ordinance. City Council also wanted to hear what the Planning Commission thought before acting on it formerly.

Mr. White asked Mr. Olson if he felt like the ordinance needs to be tweaked little more. Mr. Olson stated that he thinks the only issue he has heard so far is the live entertainment. He stated that he has heard nothing else in the body of the text amendment. Mr. White stated that it is a common denominator. Mr. Olson stated that he thinks this body [Planning Commission] has the ability add to or subtract from it before it goes to City Council. He stated that his concern is if it is taken out and then put back in at Council it would be a substantial change. Then the ordinance would have to come back to Planning Commission then back to City Council and the process is delayed by another 60 to 90 delays.

Mr. White stated that he acknowledges all of Mr. Olson's concerns; however, he wants to make sure everyone is "feed out of the same spoon." Mr. Olson stated that one of the major controversies that the City has is the noise ordinance. There has been a church appear before the City Council for eight months in a row because they were not happy with the noise restrictions. There were major noise issues with Trios when it was open where the City Meeting Place used to be. That was in a closed building and the decibel readings were way above what was acceptable. Mr. Olson stated that they are more concerned with noise. There are things on the books now that addresses noise but noise is something that everyone perceives differently. A heavy base may not give you the decibel reading but the constant beating of it that upsets people. From Staff's opinion, there is not a problem with having live entertainment as long as there are restrictions that can be placed on the live entertainment that are reasonable for the people that work and reside around that and also helps the individuals to grow their businesses. Mr. White stated that he wants to be sure that the City treats these people the same as they treat Groupers or whoever. Mr. Olson stated that he agrees; however, he has had at least a half a dozen phone calls at 2 o'clock in the morning that Groupers has a band on the deck playing. He stated that as far as reasonable restrictions on music he didn't think any here has a problem with that, but what do you define as reasonable restrictions. This Board could possibly pass something along to City Council. Mr. White stated that he thinks that it would be Mr. Olson's job to put that recommendation before Council on the Planning Commission's behalf. Mr. Olson stated that he thinks Ms. Brooks has issue with that. Ms. Brooks stated that she has an issue with that because this is a recommendation from Staff. The recommendation that Planning Commission is forwarding to Council is what they will be acting on not Staff's recommendation. She stated that probably the best interest would be to table the amendment and direct Staff to bring something back to Planning Commission that has been researched and found to be reasonable. Mr. White agrees with Ms. Brooks.

Chairman Sutton stated that he agrees with Ms. Brooks and that the Commission's consideration should center around that issue. He stated the Commission wants to promote development downtown. The Commission doesn't want to promote development downtown at the expense of the residents. He stated if they can get a motion to table this temporarily moving quickly as they can.

Mr. White made a motion to **TABLE Case TA-01-16** pending Staff's modifications of the concerns expressed by the Commission, City Manager and public.

Ms. Stallings asked for clarification that this amendment was presented to City Council and they took food completely off the table. Ms. Stallings stated that she was just curious. She had never been in a microbrewery that did not serve something. She stated that she is dumbfounded by that. She agrees that the whole amendment needs work. She asked Mr. Shaan if he didn't want to do food at all. He stated that they are going to have food. How it was written they were going to have to meet 30% of total revenue. He stated what that meant was if he started distributing here and distributed \$100,000 worth of beer he would have to come up with \$30,000 in food sales. That is what they did not agree with. Mr. Olson stated that is an ALE law. Ms. Alcock stated that this would not apply in this case. They would have to get a Brew on Premise which does not have a food sales component to it. Mr. Olson stated that Staff has consulted ALE concerning the issue. There are a lot of variables here. A lot of microbreweries also serve spirits. Mr. White asked why it has been excluded in the amendment. Mr. Olson stated that

there is a different ALE category for them. He stated that he hopes that all of the microbreweries would sell food. It is there option to serve but it is not a requirement.

Mr. White stated that his motion is still on the table. Mr. O'Neal seconded the motion to TABLE Case TA-01-16. ***ALL IN FAVOR: SUTTON, O'NEAL, STALLINGS, and WHITE. NONE OPPOSED. MOTION PASSED.***

There was discussion regarding what should be included in the revision of the amendment. The Commission would like to see hours of operation as well as a time limit on the entertainment. It was agreed upon that music should cease at 10:30 PM. Ms. Brooks stated that Staff had complaints on Thumpers and Logan Rays with their music at 1:00 and 2:00 in the morning. It was also decided to not specify types of music but to include the decibels of the music.

With no further business, Mr. White made a motion to adjourn. Mr. O'Neal seconded the motion. All were in favor. Motion passed and meeting was adjourned.

Respectfully submitted by,

Dawn Harris, Secretary to the Board

**Minutes were APPROVED at the December 6, 2016 Planning Commission meeting.*