

**CITY OF ELIZABETH CITY  
PLANNING COMMISSION  
REGULAR MEETING  
Tuesday, December 6, 2016  
4:00 PM**

**MEMBERS PRESENT**

Don Witosky, Vice-Chairman  
Sonny DiGirolamo  
Carlton O'Neal  
Gary White

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner; Dawn Harris, Secretary to the Board; members of the audience.

Vice-Chair Witosky called the meeting to order and stated that there was a quorum. He 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 December 6, 2016 meeting. Mr. O'Neal seconded the motion. ***ALL IN FAVOR: WITOSKY, DIGIROLAMO, O'NEAL, and WHITE. NONE OPPOSED. MOTION PASSED.***

Vice-Chair Witosky asked for a motion to approve the minutes from the November 1, 2016 meeting. Mr. White made a motion to **APPROVE** the minutes as read from the November, 2016 Planning Commission meeting. Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: WITOSKY, DIGIROLAMO, O'NEAL, and WHITE. NONE OPPOSED. MOTION PASSED.***

Vice-Chair Witosky 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.

Vice-Chair Witosky mentioned that Chairman Sutton is in the hospital. He inquired as to Mr. Sutton's status. Ms. Harris stated that the hospital is running test and no determination has been made.

Tonight's Old 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. Vice-Chair Witosky asked for Staff's report. Ms. Alcock presented the following:

### **STAFF REPORT**

The request before you this afternoon is TA 01-16, a proposal to amend the Unified Development Ordinance, specifically Articles 2, 9, and 11, adding language to define and regulate microbreweries in the Central Business District. Before getting to the main analysis, Staff would first like to clarify that the amendment as proposed defines a microbrewery as a brewery that produces less than 15,000 barrels of beer per year for sale either on- or off-premises. Staff recognizes other terms, such as nanobrewery, brewpub, and microdistillery are often used to describe similar small-scale beer production which varying production amounts. For simplicity sake, Staff will consider all such facilities as microbreweries. As you will recall, the proposal was considered at the November meeting, during which several citizens voiced their concern with regards to the proposed language prohibiting live entertainment. Due to past issues with businesses overtime morphing into nightclubs, Staff included the live entertainment provision to avoid similar situations in the future. While the current Ordinance does not define a nightclub, the American Planning Association provides the following definition in their Planner's Dictionary: "a commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing and musical entertainment are permitted". As was stated in the previous meeting, it is important to find a balance that allows hopeful microbrewery owners the freedom to operate a successful business, while also maintaining compatibility with the variety of land uses in the downtown area. After much discussion, the majority of Commission members and citizens were in agreeance that instituting a cut off time for live entertainment of 10 or 10:30 pm was reasonable. Concern was further raised with regards to the proposed microbreweries being treated differently from current bars and nightclubs downtown. To this point, Staff would like to state that several such businesses, including Coasters and the former Logan Rayes now Hoppin' John's, are subject to limitations on live music and entertainment. More specifically, the Alleyway Encroachment Agreement between the City and the aforementioned includes a provision limiting all music and entertainment to the hours of 10 am to 10 pm daily. Furthermore, hours of operation standards are currently in place for a variety of businesses in the Unified Development Ordinance, including billiards, bingo facilities, and pawnshops if they are located adjacent to residentially-used or zoned properties.

As a reminder, the decision made tonight is simply a recommendation to the City Council who must still call for a hold a public hearing before making a final determination. Should the Council make any substantial changes from the amendment as proposed, it would be referred back to the Commission for further consideration.

This concluded the report.

Mr. Dean Schaan had signed up to speak. He was called forward. Mr. Schaan stated that he is the managing partner of ECBC, LLC; also known as Elizabeth City Brewing Company. They are the property owners at 113 North Water Street who has the intent of turning the property into a microbrewery. He stated that again their end result is to be able to develop the building into a microbrewery where they will be able to brew and sell beer on site. Part of that is investing a

million dollars into this project and part of that [investment] is to revitalize the historical Fowler building into upgrades for the building. Mr. Schaan stated that they feel such a restriction even with the 10:30 curfew that is very limiting for them. Especially, when entertainment is not a core function to what they will be doing. It is an ancillary thing just like selling t-shirts. Mr. Schaan stated that they do not understand why there is a restriction going to be put on that, especially when there are no other restrictions on downtown businesses like that. He stated that even during this past Friday at Art walk there were restaurants with bands on the streets but they are being limited on their entertainment. He stated that it just does not make sense to them. His question is what standard are they being limited and what does a 10:30 PM entertainment curfew do to them. They understand that there are some proposals coming in the alleyway which is outside. But again, they do not understand how a guitar player inside a building has to have the 10:30 curfew. Those type of curfews and that type of restrictions effect revenue/income. He stated for them to put this much money toward a downtown project and then be restricted on things that will definitely hit them in the pocketbook, seem unfounded, unjust and unresearched.

Mr. DiGirolamo asked Mr. Schaan what location is he. Mr. Schann stated that they are on North Water Street--the old Fowler building; 133 North Water Street.

Vice-Chair Witosky asked for questions from the Commission. Mr. White asked did not the Commission give direction to Staff at the last meeting. Ms. Alcock stated yes they did. Mr. White asked for an explanation for the redirection. Ms. Alcock stated that it seemed to be the consensus at the end of the meeting that limiting hours of operation... That's just for the music portion not for overall. They can stay open past 10:30 PM but any sort of live entertainment will need to cease at 10:30 PM. The discussion seemed to be 10:00 or 10:30. There was also a discussion about not permitting a cover charge and there was a discussion about decibels limits but it has since been decided that the decibels are covered in the noise ordinance so it doesn't need to be duplicated in this amendment. Mr. White asked Mr. Reese if he had heard what they were discussing. Mr. Reese came in late to the meeting. Mr. Reese stated yes. Mr. White stated that his partner behind him has concerns about being made to just down the entertainment at 10:30 PM. Mr. White asked Mr. Reese what his thoughts were.

Mr. Reese came forward and signed up to speak and remained at the podium. Mr. Reese is the president and owner of Ghost Harbor Brewing Company. He is looking to open at 606 B Colonial Avenue. Mr. Reese stated that as far as the 10:30 cut-off for live entertainment and the no cover charge, his only concerns would be the restrictions being put into the text amendment for the ordinance. It doesn't seem to be the place for those. He stated that there is an ordinance in place for noise. If they have entertainment that starts at 9:00 PM and then have to turn them out at 10:30 PM--he stated that there's no other businesses that have those kinds of restrictions on them. Initially, they do not plan on being open all hours of the night. He stated he should say initially he means traditionally. Craft beer houses manufacture their products. His main draw to the establishment will be the craft beer that they produce. The entertainment will be just that. It will be for their customers that come and enjoy their products. Mr. Reese stated that he hopes to be able to provide them with entertainment and mainly from local artist. He stated that they will all have to apply for a Special Use Permit. Inside there he is certain will be something regarding noise and levels to keep it at. For him, he doesn't want to restrict the growth potential that his business will have.

Vice-Chair Witosky asked for questions from the Commission for Mr. Reese. Mr. DiGirolamo stated that his question is relative to when these places are built. He stated that he lived in Texas for a while. There are a couple of strips down in the Galveston area that are just strictly entertainment. In some of the areas where they were close to residential area they were able to stake out a place where the band/platform would be and somehow put some acoustic in there to limit what would travel outside. That would be the only way he sees them getting the 10:30 PM time jacked up a little bit. He mentioned that one of the problems he sees downtown is that there are scattered apartments here and there.

Mr. Reese stated that the building he is looking at is rather small and entertainment for him would be a guy in the corner playing an acoustic guitar. Even with the noise ordinance, he stated that the talking and chatter in the establishment would be louder than the music and instruments that he would plan to bring in. With that being said, just to put it in the text amendment to the ordinance--the restrictions for future breweries or as they expand--to shut down all live entertainment at 10:30 seems too restrictive. He stated that they will have sound stuff put in place, but speakers and any of that stuff would not fit his business model. Mr. Reese stated regarding the cover charge--if they have a local artist that starts pulling enough of a draw that it would warrant a cover charge to perhaps regulate the attendance. He stated that they would like to pay that artist the cover that they draw to be fair to the artist. If they are not allowed to do some kind of cover charge it would be a direct cost to the business. Mr. DiGirolamo stated that he thought he saw something in the Staff Report regarding the cover charge. Ms. Alcock stated yes, it was discussed in the previous meeting as a way to keep that transitioning from happening as seen in the past. Mr. DiGirolamo asked for her to define transition. Ms. Alcock stated that the City has had certain businesses open under certain pretenses that has tended to morph into a more club type scenario--being open later with bands or DJ's with speakers which draws in noise complaints with disturbance calls. They are trying to limit that kind of thing. Mr. Reese stated that one difference he would note from a brewery and a club is that the brewery operates under the Federal TTB (Tobacco Tax and Trade Bureau). There are a lot of regulations and rules that they apply to them that they have to follow. One regulation is that they cannot sell hard liquor. He stated that every square foot of his businesses zoned for tax purposes. That's all they are interested in. There is a lot of things as a brewery that they have to abide by that would prevent them from becoming anything like a nightclub. Mr. Reese stated that he would lose his brewery license and that is more of a concern for him than the noise.

Mr. O'Neal asked Mr. Reese what his normal hours of operation will be. Mr. Reese stated that his current business plan has them opening from 5:00 PM - 9:00 PM on Thursday, 5:00 PM - 10:00 PM on Friday, 5:00 PM - 10:00 PM on Saturday and 2:00 PM - 7:00 PM on Sunday. Mr. White asked, "Then why is this 10:30 a problem?" Mr. Reese stated that he will still maintain his job in Chesapeake when he first opens his business. In the future if he wants to stay open until 11:00 PM or 12:00 AM he would not want the restrictions on it. That is his personal reason. He is not sure if about Mr. Schaan.

Vice-Chair Witosky stated to Ms. Alcock that in her report she had mentioned when Thumpers and Logan Rayes were open that they had restrictions to 10:00 PM. He asked Ms. Alcock to go over that part of her report. Ms. Alcock stated that is a part of the alleyway encroachment agreement between the City, Logan Rayes (now Hoppin' Johns), Coasters, and Thumpers (now closed) for use of the alleyway. One of the stipulations of the agreement is that live music and

entertainment be limited from 10:00 AM to 10:00 PM. While that doesn't cover all bars and nightclubs in the City, we do have restrictions. Vice-Chair Witosky stated that it was a special circumstance. Ms. Alcock stated yes. He stated that it was a professional courtesy, but another restaurant not in the alleyway would not be restricted. Ms. Alcock stated correct.

Mr. White asked if there was an alleyway behind the old Fowler building. He stated that he thought there was. Mr. DiGirolamo asked what category Groupers falls in. Ms. Alcock stated that they are a restaurant and bar. He stated that they have entertainment on the deck. Mr. White stated that Groupers is not limited to 10:30 PM. Ms. Alcock stated no.

Mr. Tony Stimaz asked for clarification that the alley restriction only applies to the alley. They can still have entertainment in side after that time period. Ms. Harris asked for Mr. Stimaz to sign in if he wished to speak. He stated that he was not speaking, he has questions. He stated that he is trying to clarify for his notes that the alleyway restriction only applies to the alleyway-- does not apply to the business itself, inside. Vice-Chair Witosky stated he had one other question and would get back to Mr. Stimaz. Vice-Chair Witosky asked if there had been any resident to come and express any concerns about the microbreweries. Ms. Alcock stated no.

Ms. Alcock stated that in the Staff Report they decided to not do any type of separation requirement because with it being in the downtown area if you start putting limitation such as a 200 foot separation would restrict the locations that the breweries could go. However, other jurisdictions do tend to place a property separation in terms of residential uses/zones, which negates the need for live entertainment regulations.

Vice-Chair Witosky recognized Mr. Stimaz to speak. Mr. Stimaz stated that he is just asking for a clarification of the restrictions in the alleyway. He stated that it is his understanding that it only applies to the alley itself. It does not apply to the inside of the two buildings. Ms. Alcock stated that is correct. It states, "Outdoor cafe activities including music and entertainment shall not be conducted or played at a volume as to disrupt activities of the adjacent land uses. All music and/or entertainment shall commence no earlier than 10:00 AM and end by 10:00 PM daily." Mr. Stimaz stated, alleyway cafe. Ms. Alcock stated correct. He stated not the (inaudible). Ms. Alcock stated correct and that she was just pointing out that there are restrictions in place. Granted there are some difference, but they are in place. Vice-Chair Witosky confirmed that it is restricting outdoor activity. Ms. Alcock stated yes.

Mr. DiGirolamo stated that he did not realize that the 10:30 cutoff was paramount. Mr. White stated that he thinks Ms. Alcock stated it well that we are trying to safe guard it from morphing into something other than its original intent. Ms. Alcock read an excerpt from the City's Noise Ordinance as follows: "The playing of any musical or electronic sound-amplification equipment in such 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 sensibilities in the vicinity." She stated that this is unlawful. Also there is a table in the noise ordinance on the next page for commercial businesses that states between the hours of 7:00 AM and 11:00 PM the decibel max is 65; between the hours of 11:00 PM and 7:00 AM the decibel max is 55. This would be subject to law enforcement going out with a noise meter to check.

Vice-Chair Witosky asked if anyone on the Commission would like to share their thoughts on this issue. Mr. White stated that he just wants to make sure we "feed everybody out of the same spoon." Vice-Chair Witosky stated his thoughts. He stated that he realizes that there is a difference between microbreweries, taverns and restaurants. But there is a lot in common, too. To him it's the serving of alcohol, the serving of food and the option of entertainment and all three have that. He stated to restrict a microbrewery on something that a restaurant would not have a restriction on is unfair. It is a difference, but it is a minor difference. He stated that there has not been any residents come and express any displeasure with the microbreweries. He stated that is his personal feeling. Mr. White stated that he concurs with Vice-Chair Witosky and he stated to let it be regulated by the current City ordinance. Mr. DiGirolamo stated that he agrees. Vice-Chair Witosky stated that he does understand Staff's concerns, but does not feel it is great enough to place restrictions on the breweries. Mr. O'Neal stated that with the timeframe they will be working in he has no problem. Vice-Chair Witosky stated that he just wants them to be successful. He stated that he thinks it will be great for Elizabeth City. Mr. White stated that downtown needs all the help it can get.

Vice-Chair Witosky called for a motion. Mr. White made a motion to APPROVE all sections excluding 6 and 7 in ordinance 11-4.50.1 section B to be inclusive of 1-5 and to exclude number 6 and number 7. Ms. Harris requested that Mr. White repeat the motion. Mr. White made a motion to APPROVE Text Amendment 11-4.50.1 section B in Operations to include 1-5 and to exclude 6 and 7. Ms. Alcock asked for Mr. White to clarify if he was including 11-4.50.1 section A which is requiring a Special Use Permit in the Central Business District as well as C for Outdoor Storage and the definitions.

Following a brief discussion Mr. White amended his motion as follows--to **APPROVE** Text Amendment 01-16 as proposed by Staff excluding number 6 and 7 in Article 11-4.50.1(B). **Mr. O'Neal seconded the motion. ALL IN FAVOR: WITOSKY, DIGIRALOMO, O'NEAL and WHITE. NONE OPPOSED. MOTION PASSED.**

Next item on the agenda was **CASE NO.: RZ-02-16** - filed by Water Street Properties, Inc. for property located northwest of the intersection of North Water Street and Pearl Street. (Parcel ID# 891420905413; Tax Map 5-B-7). The site lies approximately 375 feet from the intersection of Water and Elizabeth Streets. The applicant is requesting a Rezoning from General Industrial (I-2) to Central Business (CB).

The applicant was not present. Following discussion Mr. White made a motion to **TABLE** RZ-02-16 until the Planning Commission's January meeting and for Staff to contact the applicant. Mr. DiGirolamo seconded the motion. **ALL IN FAVOR: WITOSKY, DIGIRALOMO, O'NEAL and WHITE. NONE OPPOSED. MOTION PASSED.**

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 January 3, 2017 Planning Commission meeting.*