

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MARCH 2, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Donald Routhier, John Kennedy and Bill Griffith, Alternate.
MEMBERS ABSENT: Roland Dumont.
STAFF PRESENT: Bob Belmore, City Manager/Interim Director and Tracy Gora, Planning Secretary.

The meeting was called to order at 7:00 pm.

Maskwa appointed Alternate Griffith as a voting member of tonight's meeting.

Maskwa stated that Dave Sharples no longer works for the City of Somersworth and that he was a great resource and will be missed. Wished him well on his next endeavor and stated that he will be great for the Town of Exeter.

1) APPROVAL OF THE MINUTES OF THE MEETING OF FEBRUARY 3, 2016.

Motion: Kennedy moved to approve the minutes of the meeting of February 3, 2016.

Seconded by Keiser. Motion carried with a 5-0 vote.

2) OLD BUSINESS

- A) GEM Farms Revocable Trust is seeking a special exception from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility on property located at 21 Grand Street, in the Historic Moderate Density (HMD) District, Assessor's Map 11, Lot 17, ZBA #10-2015.

Belmore stated that he received a letter from the applicant's attorney (see attached) explaining that they are withdrawing their application for 21 Grand Street. Stated that they may come forward with a new application at a later date but that the current application is withdrawn.

- B) Any other old business that may come before the Board.

None.

3) NEW BUSINESS

- A) 450 High Street, LLC is seeking a special exception from Table 4.A.5.22 of the Zoning Ordinance for a lounge, bar, nightclub or similar establishment on property located at 450 High Street, in the Residential Commercial (RC) District, Assessor's Map 38, Lot 37, ZBA #03-2016.

Belmore read the memo (see attached) and stated that the application is for a special exception for a lounge, bar or tavern and reviewed the features of the lot. Stated that they submitted a minor building permit application to combine two of the units in the building for a brewery and tasting room. Stated that the building permit application was

originally denied because the Code Officer felt the use of a tasting room fits the definition of a lounge, bar or tavern and the use of a brewery fits the definition of an industrial use, according to the Zoning Ordinance. Stated that there was further discussion on whether a variance is needed but they are presently here for a special exception. Stated that after consultation with legal counsel, it has been determined that a variance will be needed. Stated that the Zoning Ordinance definition of an industrial use includes the manufacturing of goods and that is what will happen here. Stated that the Board can move forward with the special exception request and suggested considering having a condition that they apply for a variance.

Public hearing opened 7:05 pm.

Steve Patterson, general counsel for the property owner, 450 High Street, LLC addressed the Board. Stated that they have been in the City for many years with Key Auto, they built out this site and they are going to purchase 100 Tri City Road. Stated that they do not dispute the City's Attorney's opinion that a variance is needed. Stated that they want to produce craft beer and that they are purchasing a building on Route 1 in Portsmouth for a full scale brewery and restaurant. Stated that they have found that many breweries have a pilot brewery to start off and get the project to market and this is a good place for that. Stated that they talked with then-Director Sharples in July and the thought was to have a restaurant in Somersworth and that the brewery would be an accessory use to it. They decided against having a full restaurant in Somersworth but they do want to have a tasting room. Stated that the building permit application was denied and they scrambled to get the special exception application in on time and didn't apply for the variance. Stated that he read the Code Officer's denial letter to mean that a special exception or a variance was needed but not both. Stated that he met with the City Manager on Monday and they will also move forward with a variance request. Stated that they have equipment being delivered in a few weeks and they want to move forward tonight with this first step. Stated that this pilot brewing system is limited in size and that they are applying to be a nano-brewery with the State of NH. Stated that he will let the application stand for himself and that he is available to answer any questions.

Reverend Troy Brackett of 3 Chabot Street addressed the Board and stated that he has lived here for about 22 years. Stated that they have no problems with the new neighbors in general and that they have lived up to the conditions from their last approval. Stated that they are concerned because there were conditions of past approvals that were ignored or broken over time and dealing with it after is difficult. Stated that he has no issue with developing the property but that he has reservations with the alcoholic use. Stated that there are other bars close by and that this could become a full-fledged lounge. Asked that the Board consider that the property abuts residential uses. Stated that he is concerned with the hours of operation and having people hang around until last call.

Patterson stated that since it is just a tasting room, it wouldn't be open normal bar hours and that they are looking to close by 9:00 pm.

Kennedy confirmed that they are not serving any food but just 4 ounce beer samples.

Patterson confirmed and stated that it is the only thing to be served.

Routhier asked if these units are condominiums.

Patterson replied no and stated that they will be leased.

Routhier stated that they are the leaser and the lessee. Asked if they are appealing the denial of the building permit.

Patterson stated that they are not appealing the denial.

Routhier asked about when the establishment should close.

Patterson stated that they will start at 7:00 am and close by 9:00 pm.

Routhier asked if they have an objection with the Board issuing a time that the establishment must be closed by at night.

Patterson replied no and stated that sometime down the line they may seek plans for a small restaurant with food service.

Routhier asked how a specific time they must close by each night would impact a restaurant use. Asked how definite they are to have a restaurant use.

Patterson stated that they are not sure.

Maskwa stated that there will be some commercial use in front where you can have samples and buy product. Asked if it will be a bar situation or just sampling tables.

Patterson stated that the layout of the front room is still underway but that he thinks there will be tables where people can sit and order samples. Stated that there will also be large coolers with product. Stated that he assumes there will be kegs but he is not sure.

Maskwa stated that part of the special exception criteria is to look at anticipated traffic and asked if they will be material shipped to the site, including beer from the Portsmouth location.

Patterson stated that they are not shipping to Portsmouth but that there will be deliveries. Stated that they will only be brewing up to 2000 barrels a year. Stated that there will be trucks picking up beer for distribution. Stated that there will be four to five employees.

Maskwa asked if there will be plenty of parking.

Patterson replied yes.

Maskwa asked about noise, glare or odor.

Patterson stated that he doesn't think there will be any. Stated that there will be very limited discharge to the air and that sometimes there is odor from waste water but that they will have treatment systems for that.

Maskwa asked if all the brewing equipment will be in the building.

Patterson replied yes and stated that there will be a glass wall separating the brewery section from the tasting room.

Keiser asked about the loading docks.

Patterson stated that trucks will come down the center lane and take a right to go to the loading area.

Keiser asked about a law that limits the samples to 4 ounces.

Patterson stated that they are applying for a nano-brewery license from the State and that only 4 ounce samples can be served if they do not serve food.

Keiser asked if there is a limit to how many samples can be purchased.

Patterson stated that it is just what State law allows.

Keiser asked if there will be brewery tours.

Patterson stated that he doesn't believe so but that there will be a mezzanine at the Portsmouth location to view the brewery.

Keiser asked if tasting rooms are recognized by the State because he wants to make sure he uses the right term.

Patterson stated that there will be a nano-brewery in the back with a tasting room in front with some retail sales.

Kennedy asked if they can serve hard liquor.

Patterson replied no and stated that they will not be producing any.

Public hearing closed.

Motion made by Kennedy: After review of the application, the file and all the information presented to the Board, I move that the request of 450 High Street, LLC for a special exception for a lounge, bar, nightclub or similar establishment be **GRANTED** with the condition that the applicant return to the Zoning Board with a variance request for the brewery.

Seconded by Keiser.

Routhier stated that the special exception would be limited and that a variance is needed for the brewery.

Griffith stated that the write up refers to a cocktail lounge and that the ordinance doesn't specify a tasting room. Asked if they could open a restaurant with a brewery in the back.

Keiser stated that they can open a restaurant by right but that manufacturing is not allowed. Stated that he is struggling with the motion because they have a right to use

the property if criteria are met. Stated that if they put a condition of the approval that they have to be granted a variance they that is impacting their special exception rights.

Belmore stated that he would like to clarify and that the original building permit application is for the brewing of craft beer and they understand that they need a variance. Stated that the special exception is tied to the variance because of the use they are applying for.

Routhier stated that he understands but that they can have a tasting room without a brewery so he finds it difficult to make the brewery a condition of approval. Stated that they have the right to operate without a brewery and that he doesn't think a variance should be a condition of approval.

Maskwa stated that he thinks Routhier makes a good point but that the applicant is amenable to coming back for a variance. Stated that he feels that the special exception criteria have been covered.

Kennedy stated that he would like to keep his motion with the condition for a tasting room only.

Keiser withdrew his second to the first motion and seconded this motion.

Routhier asked for thoughts on the closing time of the tasting room.

Griffith stated that it may be a good idea but asked if it can be enforced.

Routhier stated that the City would have to enforce it. Amended the motion for another condition of approval that the tasting room closes by 10:00 pm.

Belmore clarified that the applicant is proposing that it close by 9:00 pm but that Routhier suggests that closing time be 10:00 pm.

Routhier confirmed and stated that it is for flexibility.

Motion carried with a 5-0 vote.

B) Any other new business that may come before the Board.

Maskwa stated that the City received a request for a rehearing of the approval issued by the ZBA for 472 High Street. Stated that the Board needs to consider the rehearing request within 30 days so they will have to meet again before the next regularly scheduled ZBA meeting. Suggested having an extra meeting on Tuesday, March 15, 2016.

It was indicated that that proposed time would work for Kennedy but not for Keiser or Griffith.

Griffith stated that any day be a Tuesday would work for him.

Belmore suggested Thursday, March 24, 2016.

Agreement from the Board.

Belmore suggesting meeting at 6:00 pm.

Agreement from the Board.

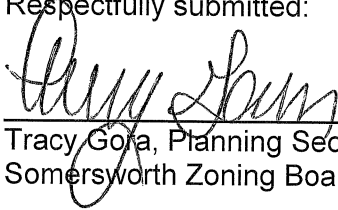
Maskwa stated that at the extra ZBA meeting the Board will consider the appeal of the Bonfire application. Extended best wishes to Board member Roland Dumont for a speedy recovery.

Motion: Kennedy moved to adjourn the meeting.

Seconded by Griffith. Motion carried with a 5-0 vote.

Meeting adjourned at 7:56 pm.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Tracy Gora", is written over a horizontal line.

Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment