

## MINUTES

### BOARD OF BUILDING & ZONING APPEALS

January 7, 2016

**MEMBERS PRESENT:** Tate Emerson, Ken Suchan, Doug MacMillan, Lukas Gaffey, and Stewart Fitz Gibbon

**MEMBERS ABSENT:** Gregg McIlvaine

**STAFF PRESENT:** Andrew Dutton

#### I. MINUTES

Doug MacMillan moved to accept the Minutes of December 3, 2015. Lukas Gaffey seconded the motion. Motion carried by a 4-0-1 vote, Stewart Fitz Gibbon abstaining.

#### II. PUBLIC HEARINGS

**Appeal #2016-01. Mark Morrison of Morrison Enterprises LLC** requesting a use variance from Planning and Zoning Code Section 1143.02(d)(3)J. to allow a retail use at 437 East South Street in an M-3 (Urban Manufacturing) District.

Mark Morrison, Morrison Enterprises, was present. Mr. Morrison stated a use variance was being requested in order to conduct retail sales in the front portion of the building located at 437 East South Street. Mr. Morrison stated a micro-distillery was proposed which would include retail sales of promotional items and product. Mr. Morrison stated the proposed retail space would be handicapped accessible and would comply with all local and state codes; there would be ample parking on the property. Mr. Emerson stated in the statement (narrative) provided to the Board, it indicated that, *"The use will include the retail sales of distilled beverages but would be limited to serving no more than one ounce of liquor, per person, per day"*. Mr. Emerson questioned whether anything else would be sold at the site. Mr. Morrison stated promotional items such as t-shirts, hats, and various related items would be available for sale. Mr. Morrison further stated that with the liquor license that he would be applying for, they would be able to sell two sealed bottles of their product to a customer each day. Mr. Morrison stated since they were a distillery, they would sell spirits (bourbon, gin, vodka). Mr. Fitz Gibbon questioned if 1-oz. services were what was permitted under the liquor license. Mr. Morrison stated yes—a sample only. Mr. Emerson questioned if that would be the only thing consumed on site. Mr. Morrison stated yes. Mr. Morrison stated it was not his intent to have a bar-like setting. Mr. Morrison stated it would be more about showing people how the products were made, what local produce was being used, etc. and then they would have an opportunity to choose a sample and taste the product.

Mr. Emerson stated it looked "an awful lot like a bar" in the building drawings provided to the Board. Mr. Morrison stated the plans did show a tasting area which was felt would be better for the customers when they sampled the products. Mr. MacMillan questioned if all of the samples would be something which was made at the distillery. Mr. Morrison stated yes.

Mr. Suchan noted there was a mezzanine in the building. Mr. Morrison noted the mezzanine was existing. Mr. Suchan questioned whether he owned the unoccupied building next door. Mr. Morrison stated yes.

Mr. Emerson stated with a use variance, all of the criteria needed to be met. Mr. Emerson questioned whether there was any supporting information that would show that without the proposed retail space, the business would not be successful. Mr. Morrison stated the amount of marketing which went into the retail environment was overwhelming, and if people could not come to the site to see the distillery and products, he felt it would create a hardship for the business. Mr. Emerson questioned if all other distilleries had a retail component to their business. Mr. Morrison stated many people took part in the “bourbon trail” to tour distilleries and to learn of the products each distillery had. Mr. Emerson questioned if there would be individual customers as well as groups coming to the facility. Mr. Morrison stated it was common for people to make distilleries a “destination stop”; buses would also be welcome to tour the distillery.

Mr. Emerson stated putting a retail business in the M-3 District was an action he (Mr. Morrison) was creating. Mr. Morrison stated he needed to be in an industrial zoning district to make the product, so the majority of the business fell within the correct zoning district. Mr. Suchan noted that it was normal for distilleries to have tasting as part of the business as well. Mr. Fitz Gibbon stated the use was mixed, but that the Zoning Code was designed for single uses. Mr. Fitz Gibbon stated he felt the retail portion of the business was ancillary to the distillery itself.

Mr. Suchan noted that the Board approved a similar variance for a t-shirt business/screen printing on East Liberty Street. Mr. Emerson noted that Fought Signs was located across the street from the proposed distillery. Mr. Suchan questioned if Fought Signs was a non-conforming use in the C-4 District. Mr. Dutton stated yes—possibly.

Mr. Suchan stated this piece of M-3 District was cut off completely by the railroad which was a unique situation.

Mr. Emerson questioned if there were any plans for the remainder of the building. Mr. Morrison stated at this time, it was still under investigation given the structural integrity of the building and what could be saved/what could not. Mr. Morrison stated it may be that portion of the building would just be made safer.

Mr. Emerson questioned how this portion of the building was used previously. Mr. Morrison stated it had been the location of Albright Radiator previously which he said had a retail component to it as well. Mr. Emerson questioned what existed prior to Albright Radiator. Mr. Morrison stated he believed it had been used as a grocery store and cold storage.

Mr. Morrison stated he believed Fought Signs offered retail sales out of their location across the street.

Mr. Emerson questioned if he would be selling/distributing the product elsewhere. Mr. Morrison stated yes.

Stewart Fitz Gibbon moved to approve the use variance as requested. Lukas Gaffey seconded the motion.

Stewart Fitz Gibbon voted yes. Mr. Fitz Gibbon stated the proposed use was ancillary/complimentary to the primary purpose which was manufacturing which was appropriate to the district.

Lukas Gaffey voted yes, noting he agreed with Mr. Fitz Gibbon’s comments.

Ken Suchan voted yes. Mr. Suchan stated the request met all the criteria for a use variance.

Doug MacMillan voted yes, agreeing with Mr. Fitz Gibbon's comments.

Tate Emerson stated he also felt the use variance criteria had been met and voted yes.

Motion carried by a 5-0 vote.

**Appeal #2016-02. Daniel Freeman** requesting an area variance from Planning and Zoning Code Section 1133.04(g)(2) to allow a building within the required side setbacks at 1449 Arthur Drive in an R-1 (Suburban Single Family Residential) District.

Mr. Emerson indicated that the appeal had been withdrawn.

### **III. MISCELLANEOUS**

#### **Update on Appeal #2015-36 regarding parking space size.**

Mr. Dutton stated 5 years ago, the ordinance was changed to parking spaces being 9' x 18', and while the change was made to the hard copy of the Zoning Code, the change was not reflected in the electronic version of the Zoning Code which version he had used when requiring the Hospital to provide 10' x 20' parking spaces. Mr. Dutton stated while the Board did not approve the variance the Hospital had requested for the 9' x 18' parking space, in reality, the variance was not necessary as that was the actual size the Code required. Mr. Dutton noted that the Hospital would be proceeding with their plans and installing the 9' x 18' parking spaces as that was actually permitted by the Zoning Code. Mr. Dutton stated he felt the Code was changed partly because of the number of variances which were requested when the spaces were required to be 10' x 20'.

Meeting adjourned at 5:56 p.m.

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**Tate Emerson, Chairman**

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**Laurie Hart, Administrative Assistant**