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Town of Portsmouth

ZONING BOARD OF REVIEW
2200 East Main Road / Portsmouth, Rhode Island 02871

(401) 683-3611

Petition of Donovan Gray Distributing, LLC
Owner: Van Hof Land Associates
54 Bristol Ferry Road
Map 28, Lot 17
Zoned: R-20

DECISION

This matter was heard before the Portsmouth Zoning Board of Review on April 4, 2019, on petitioner's application for a special use permit under Article V, Section C.6 and Article VII, Section A of the Portsmouth Zoning Ordinance to construct and operate a farm brewery.

Petitioner was represented by Cort B. Chappell, Esquire.

The hearing was chaired by Vice Chairman John G. Borden. Members participating in the decision were Mr. Borden, Secretary Benjamin Furriel, Eric Raposa, Sue Horwitz and William J. Wladyka.

The Board heard the presentation of Mr. Chappell and testimony of Matt Gray, Chris Fagan, Mike Russell, James Houle and Paul Bannon in support of the petition, and considered the exhibits submitted with the petition and during the course of the hearing.

Mr. Chappell explained that the property is a 38-acre site in an R-20 zoning district, and that under the zoning ordinance, as recently amended by the Town Council, a farm brewery is allowed by a grant of special use permit. No setback, lot coverage or other dimensional variances are needed for the proposal. Mr. Chappell outlined the requirements for a farm brewery use as set forth in the ordinance. He noted that petitioner had appeared before the Design Review Board and the Planning Board, both of which issued favorable advisory opinions.

Mr. Chappell introduced into evidence a 10-page set of Site Redevelopment Plans prepared by Land Development Engineering and Consultants (Exhibit 1), a landscape and lighting plan (Exhibit 2), a letter of approval from the Portsmouth Fire Marshal approving of the site for access of fire and rescue vehicles (Exhibit 3), a copy of tax records showing the property is qualified for participation in the farm tax exemption program (Exhibit 4), a traffic study and report by Paul Bannon, P.E. of Beta Group, Inc. (Exhibit 5), and a Report by James A. Houle & Associates (Exhibit 6).

Matt Gray testified that he is a principal owner of the petitioner. Mr. Gray explained the history of Ragged Island Brewery's current operation at the Portsmouth Business Park. They have outgrown their current space and have been searching for a

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new location where they can expand the brewery facility and grow crops on site. Petitioner has entered into a purchase and sales agreement with the property owner, Van Hof Land Associates, and plans to move the brewery facility to the Van Hof site at 54 Bristol Ferry Road. Mr. Gray explained the state and federal licensing requirements and procedures for a brewery. Petitioner proposes to continue to use the main building, which now has a greenhouse, as a retail facility. They will continue to use the existing second-floor apartment. They plan to grow hops on approximately 2 ½ acres of the site, which will be used for brewing their beer products. Mr. Gray described the manufacturing process for a brewery. The brewery operation is typically from around 7 a.m. to 2 or 3 p.m. All brewing activity is conducted within the interior of the building. There is no noise and no offensive odors outside of the building. Their retail and sampling operations are presently 5 days per week, which they hope to increase to 7 days. They have had no problems or incidents arising out of the sampling of their products at their current location.

Mr. Gray described the five buildings currently on the site, as shown on the plans. Petitioner will continue to use the existing barns and other structures for storage of equipment, supplies, etc. Petitioner's proposes to construct a new building which will house a state-of-the-art brewery facility and tap room. This facility will be built in two phases. Mr. Gray testified concerning the landscape plan which was prepared by a landscape architect, which identifies and describes the size, location and species of plantings that will provide screening between the site and residential neighbors. Mr. Chappell noted that the Design Review Board recommended certain screening, and petitioner is committed to meeting all the board's conditions, but there may be certain neighbors who would rather have less or shorter plantings where, for example, their views would be obstructed. He asked that petitioner be given some discretion to satisfy neighbors' requests.

Mr. Gray testified concerning the proposed traffic pattern for the site. The current operation by the present owner already has retail use which generates traffic. Petitioner plans to use the current curb cut as an entrance only, and to seek approval from RIDOT to reinstate a prior curb cut for use as a separate exit to the south side of the site. Every effort has been made to maximize the distance of that exit from the neighboring property to the south. Mr. Chappell elicited testimony from Mr. Gray addressing applicable special use criteria. Mr. Gray responded to several questions from members of the Board.

Petitioner's next witness was Chris Fagan, petitioner's architect for the project. Mr. Fagan explained the architectural design of the new buildings. He noted that due to the slope of the land, the new structures essentially will not be visible from Bristol Ferry Road.

Mike Russell, P.E. testified that he is a civil engineer and his firm prepared the plans introduced as Exhibit 1. The Board voted unanimously to accept Mr. Russell as an

expert in civil engineering. Mr. Russell explained the work his firm had performed for this project. He described the topography of the site which slopes away from Bristol Ferry Road. There is a 45-foot elevation change. Petitioner is utilizing several of the existing structures. Mr. Russell explained the layout, utilities, lighting, septic, drainage, parking, traffic pattern, and other features of the proposal. After completion of the development, the site will have less flow of ground water than presently exists, and there will be no negative impact on neighboring properties. Mr. Chappell elicited testimony from Mr. Russell addressing all the applicable special use criteria.

Paul Bannon, P.E. testified that he is a transportation engineer with BETA Group. Mr. Bannon summarized his background and the Board voted unanimously to accept Mr. Bannon as an expert in traffic engineering and safety. Mr. Bannon testified concerning traffic and safety issues regarding the property site and surrounding areas along and adjacent to Bristol Ferry Road. The Board voted unanimously to accept Mr. Bannon as an expert in traffic engineering and safety. Mr. Bannon testified concerning his review, methodology, study, findings and conclusions, which are set forth in detail in his written report. Mr. Bannon testified that, in his expert opinion, future traffic conditions along Bristol Ferry Road will provide for adequate and safe access and will not have a detrimental effect on public safety and welfare in the area.

Petitioner's next witness was James Houle. The Board voted unanimously to accept Mr. Houle as an expert in real estate. Mr. Houle explained his review of the petition, the property site and current uses, the surrounding neighborhood and uses, the zoning ordinance and special use criteria, and the comprehensive community plan. Mr. Houle summarized his analysis, findings and conclusions, which are set forth in detail in his written report. Mr. Houle testified that in his expert opinion, the subject site and neighborhood are well-suited and appropriate for the proposed use. He testified that the proposal will not be detrimental to the surrounding area; it will be compatible with the neighboring land uses; it will not create a nuisance or hazard in the neighborhood; adequate protection is afforded to the surrounding properties by the use of open space and plantings; safe vehicular access and adequate parking are provided; control of noise, smoke, odors, lighting and any other objectionable features are provided; solar rights of abutters is provided for; the proposal will be in conformance with the purposes and intent of the comprehensive plan and zoning ordinance; and the health, safety and welfare of the community are protected. Mr. Houle concluded that, in his professional opinion, the proposal meets and exceeds all the applicable requirements for granting a special use permit.

Mr. Chappell noted that there was a letter submitted to the Board by Charles Allott, Executive Director of the Aquidneck Land Trust, dated April 2, 2019, in support of the petition.

The Chairman asked if any abutters or interested parties wished to be heard.

Nancy Howard, 16 Diane Avenue, read from a portion of the Planning Board's advisory opinion to the Town Council regarding the zoning amendment allowing a farm brewery by special use permit. She spoke about farm breweries and regulations in other municipalities and in other states.

Noreen Kissell and Richard Kissell, 24 Bristol Ferry Road, testified that they were immediate abutters to the south of the subject property. They expressed concerns over traffic on Bristol Ferry Road and the plan to have a separate curb to the south cut for traffic exiting the site. They suggested that the project be revised to have traffic exit from the west side of the site onto Brownell Lane.

Bill Steadman, a resident on Brownell Lane, opposed the idea of traffic exiting onto Brownell Lane. Mr. Chappell noted that a connection to a residential neighborhood is generally not allowed from a property with a business use.

Alex Chuman, Stewardship Director of the Aquidneck Land Trust, testified that the ALT was in strong support of the proposal.

Arnold Robinson, 34 Hawthorne Avenue, Barrington, RI, testified that he is a certified community planner. Mr. Robinson stated that he was strongly in support of the proposal and that he believes it meets all the criteria for a special use permit.

The Chairman then closed the hearing.

Before voting on the petition, the Board voted unanimously to impose the following conditions on any grant of a special use permit:

1. Operating hours for retail operations will be from 12:00 p.m. to 9:00 p.m.;
2. Operating hours for the brewery facility will be from 7:00 a.m. to 7:00 p.m.;
and
3. Petitioner will comply with the recommendations of the Design Review Board for plantings and screening, as stated in its advisory opinion and shown on the landscape plan; provided, however, that if any affected abutter wishes to alter the landscape plan to provide less vegetative screening than recommended, that will be allowed, with any disputes to be resolved by the Building Official.

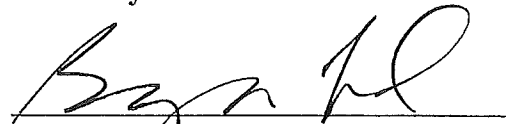
The Board then considered the petition and the evidence presented and voted unanimously to approve the special use permit, subject to the above conditions. The Board found that the land is zoned R-20 and the proposed farm brewery use is allowed by special use permit. The Board determined that petitioner had established through the testimony of Mr. Gray, and the uncontroverted expert testimony and opinions of petitioner's experts in architecture, civil engineering, traffic safety, and real estate, that

the proposed use will satisfy all applicable criteria for the granting of a special use permit. The Board determined, based on the testimony and evidence presented, that the proposal is compatible with the neighboring properties and uses. The Board found that the conditions imposed by the Board mitigate any negative impact on surrounding properties. The Board concluded that the desired use will not be detrimental to the surrounding area; that it will be compatible with neighboring land uses; that it will not create a nuisance or a hazard in the neighborhood; that adequate protection is afforded to the surrounding property by the use of open space and planting; that safe vehicular access and adequate parking are provided; control or noise, smoke, odors, lighting and any other objectionable feature is provided; that solar rights of abutters are not impacted; that the proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth and that the health, safety and welfare of the community are protected.

Accordingly, the Board voted unanimously to grant petitioner a special use permit for a farm brewery, in accordance with the plans as submitted and subject to the conditions imposed by the Board.

Portsmouth Board of Review

By:



Benjamin Furriel
Secretary

11 April 2019
Dated:

**IF NOT UTILIZED, THIS PERMIT EXPIRES AND IS NULL AND VOID ONE
YEAR FROM THE DATE HEREOF**

RECEIVED
PORTSMOUTH, RI
Apr 17, 2019 02:03P
JENNIFER M. WEST
TOWN CLERK