

Pocomoke City
Board of Appeals Meeting
April 6, 2022

A meeting was held before the Pocomoke City Board of Zoning Appeals on April 6, 2022 in the Council Chambers at City Hall and via Zoom/Facebook Livestream. The meeting was called to order at 5:00 P.M.

Members: Chairman-CL Marshall
Board Members: Kelly Miller, CD Hall
Chip Choquette and David Strauss
Planning Director: Dan Brandewie
Attorney for Board of Appeals: James Porter
City Clerk: Michelle Beckett-EI Soloh

Call to Order by CL Marshall.

Planning & Zoning Attorney, Jim Porter, stated that the hearing will be conducted in the following order: The hearing is recorded. Planning Director, Dan Brandewie, will read a staff report into the record. Applicants can present their case, then proponents in favor, then the opposition, then the applicants for rebuttal. If the Board has a question, they may ask it. Names and addresses will be taken for identification. If you do not wish to come forward and speak, you may sign the sign-in sheet for record of your position. Mr. Porter advised members to state their name prior to speaking.

VAR 79-2022, Cypress Roots Brewing Company, Willey Strategies LLC., (owner-applicant) is requesting a conditional use permit and to produce and sell alcohol (beer), and provide for food service per Article IX, §230- 63 M with the construction of a micro-brewery/brewpub located at 148 Market Street, Tax Account: 01-017861 Street in the B-1 Shopping District.

Public Hearing opened.

Mr. Brandewie was sworn in for testimony. He noted that he is presenting his staff report for the March 3rd Board meeting. Additional material that came in since then include a revised site plan prepared by the Hauseman Group, Frank Hawk, dated 3-28-22; was marked as Exhibit 1 and the staff report as Exhibit 2. A certificate of publication for a notice for this public hearing was marked as Exhibit 3. It is a readvertisement. Also included was a list of adjacent property owners that were notified and a notice that was posted on the building. Copies of five letters of support provided by the applicants from adjacent property owners and letters from local food businesses that are willing to provide food provisions to the brewery were marked as Exhibit 4. The applicants notified him of their intent to apply for certain state and county licenses; they sent the whole application document and regulations for the county license but he didn't believe it was necessary to print out the entire set of regulations. He provided a copy of what license they would be applying for identified as the Class D Beer, Beer and Wine license. Marked as Exhibit 5. In addition, we provided email correspondence and a letter of opposition from Deborah Ullmann is marked as Exhibit 6.

Mr. Brandewie referred to the revised site plan now shown on a board. (7:47) and reviewed the application notice. The owners of the newly formed Cypress Roots Brewing Company are seeking to start a microbrewery/craft brewery or brewpub where beer is brewed, served on-site and packaged to be made available for sale and outside consumption. The owners, Warren Willey and Jessmin Duryea, have submitted a business plan and site plan (Attachments 1 and 2. (8:41)

They have purchased the brick building located at 148 Market Street as listed on the SDAT document shown as Attachment 3. The building has been vacant for over five years, last occupied by a tax preparation service with upstairs offices and two residential apartments. The building contains 5,130 square feet of conditioned space on two floors. The lower floor contains approximately 2,600 square feet. The property contains 6,126 square feet of land area. (.14 acres) fronting both Market Street and Willow Street. Attachments 4 and 5 show an aerial image of the property and a survey dating back to 1947.

The applicant's preliminary site and building plan show a seating area for 48 patrons in the front portion of the building with access to two bathrooms to the rear of the building. The remaining half of the building contains the brewery operation, cooler, mixing room and a shipping/receiving area with access to a loading ramp. As originally proposed, the rear portion of the property is proposed to contain a beer garden seating approximately 40 persons with an entertainment platform. It was to be surrounded by a fence with access to the rear fronting Willow Street. No on-site parking is provided on the site plan. (10:15) Within the B-1 Shopping District (Article IX), Section 230-63, under Conditional Uses item G provides for "outdoor cafes" and item M allows for "Alcohol sales in conjunction with a restaurant only and with appropriate licenses". Restaurants and cafes, or retail establishments serving food, are further permitted as principal permitted uses but no mention is made of alcohol sales. Within the definitions of the zoning code, there is no definition of restaurant, micro-brewery or brewpub or related land uses. Under Section §230-65, (Use regulations), outdoor cafes are permitted outside of the building. Further references within the B-1 zoning district do not require setbacks distances (Section 230-66) Staff notes that the owners intend to provide for limited food service including the sale of pre-packaged food items and to also allow patrons to bring in food from neighboring businesses. One of the exhibits handed out were letters of support from food providers and area restaurants (11:23). As a matter of policy, provision of on-site parking within the B-1 downtown shopping district is not required in accordance with Section 230-86. Staff has estimated that there are approximately 66 public parking spaces within 300 feet of the building. This includes on and off-street parking. This section also authorizes the Planning Commission and Board of Zoning Appeals to grant variances to parking requirements; however, it would appear that variances are not required. Additional provisions allow the joint use of parking and satellite parking arrangements using other private parking lots with permission of the owner. Additionally, since the building is under 10,000 square feet, no off-street loading spaces are required per § 230-85. (12:14) Staff's position is that this is a conditional use application, and is consistent in that alcohol sales can be permitted in conjunction with a restaurant only with appropriate licenses. And then the issue becomes what is a restaurant. There are many definitions of a restaurant. There is a sit-down restaurant, a fast-food restaurant and new categories over the years such as food trucks and on and on. (12:53). Given that it is not clear what a restaurant is and with the lack of definition, so long as food service is provided staff believes it meets the spirit of the definition. If the Board concurs with that premise, that it is a conditional use permitted within the B-1 zoning district, Staff is recommending that the Board require the owners to provide pre-packaged food items or on-site food preparation be made available as a condition of approval and the applicant must obtain all appropriate state and county licenses. (13:19).

Board Member CD Hall asked about the outdoor space or beer garden if that is happening; if that has been removed? Mr. Brandewie noted that there have been issues raised about access. He pointed to the survey showing that logically, the property should be a rectangle but there another property that extends into this approximately 7 feet on a diagonal. There is a shared driveway on that property off Willow Street to the neighboring parking lot. There is an issue raised from the neighboring property owner as far as access, no access, shared parking, trespassing. As of right now they show no use of the adjacent property. (14:37) So the outdoor area is not proposed. They indicated that they may pursue this later.

Warren Keith Willey II, co-owner of Cypress Roots Brewery, 279 S. Somerset Ave, Crisfield, MD. He stated that he and Jessmin have co-brewed together for 20 years and we are looking to bring this community together. Jessmin is a resident of Pocomoke and he also has plans to move to the area. He and Jessmin would like to work with the community to bring people together and work with the other businesses. There are a lot of opportunities for growth so with this brewery they will bring more people to the area and support the local businesses. They did not wish to have a kitchen in their establishment and not compete with other restaurants in the area. We would bring more business to them and build each other up. Everything else is spelled out in the business plan.

Board Member Kelly Miller: asked if they had plans for the apartments upstairs. Mr. Willey stated there are no plans for the apartments at this time. Ms. Miller asked if they will rent them out to area residents. Mr. Willey replied that area will be sealed off and it would be five to ten years before that is revisited. Ms. Miller asked if the owners would be Maryland TAM program certified to serve alcohol. Mr. Willey answered yes, they both would be certified.

Board Member CL Marshall asked how the emergency exit at the back of the building or rear, would it be maintained free and clear? Mr. Willey answered that it will remain unobstructed as a requirement of their beer license. They are in compliance with the County license as far as one egress and ingress in the building. (18:56) All customers would go in and out from the front of the building. The emergency exit door in the corridor, shown on top of the drawing is for patrons. If the beer garden is in existence, another emergency exit would be added. Mr. Marshall: just to be clear the beer garden is not planned. Mr. Willey confirmed that.

Mr. Marshall noted the other issue in on your food service and this is a gray area in terms of what a restaurant or café is and the food service is vital when serving alcohol and asked what are the specific plans for food. Mr. Willey said they have partnered with five restaurants in town. Dockside will partner with us and have a food truck. Several establishments that will have specials and free delivery directly to the brewery such as Dockside, Café Milano, China Garden and Dominos and Subway. They will have prepackaged food such as chips and nuts. Mr. Marshall asked if he could expand on that such as other items, hot dogs, sausages, anything like that? Mr. Willey stated that that they are looking into bar-type foods and working with Ryan Hayward with the Environment Services on that. (20:50)

CD Hall asked if the food truck will be out in front? Mr. Willy confirmed it would be out in front.

Kelly Miller: asked that with no beer garden, will there be space outside where drinking is allowed. Mr. Willey said no, all consumption is indoors.

Mr. Marshall addressing the parking issue, permanent seating of forty-eight? Mr. Willey confirmed forty-eight patrons.

Board Member Chip Choquette asked if they would be applying for a Class D liquor license? Mr. Willy stated that was correct.

CL Marshall asked to expand on their offerings: if alcohol will include off-site sales; Mr. Willy responded that they will be investing in a Crowley (sp?) system to fill cans and be able to sell them in a 4 or 6 pack, like retail to be taken out; and whole ceiling kegs and bars in the area. (22:28)

Commissioner Strauss asked if the back exit was handicapped accessible and if plans were to be drawn up an architect and meet requirements. Mr. Willey said that will be modified.

Commissioner Choquette (23:42) stated that one of the big questions is over the definition of restaurant in the code; selling alcohol in conjunction with a restaurant with appropriate licenses; why he thought his business falls under this section and what about your business justifies conditional use for this now: Mr. Willey said originally we had talked about producing food but that there is a huge financial overhead involved in all that equipment as well as extra staff and extra food service requirements; by the Health Department. They decided that they would rather stick to what they are good at which is brewing beer. There is also talk in the past to allow an operation like ours. (24:27).

There were no additional speakers associated with the application.

Joshua Nordstrom, District One County Commissioner, 804 Market St, was sworn in for testimony. He has been County Commissioner for about 4 years. The County Economic Development office has grown a lot. He has seen how this town has struggled to fill up these stores, bring in business. A business like this could be an anchor for downtown. We need to do everything we can to help this business. Nothing attracts business like other businesses. You do it one business at a time. There are plans for a new library on the Armory site; and recreation center in this town but we need more. Mr. Nordstrom has met with these applicants and believes that they will be an asset to the town and do a good job. They understand what they need to do to get their business open as soon as possible. The City and County will support them. We just need these storefronts filled up.

CL Marshall asked Mr. Nordstrom if he was familiar with any other establishments that do not have full kitchens and are successful. Mr. Nordstrom said that he is familiar with several establishments that started the same way and are successful. He mentioned Burley Oak that has a pizza place next to it and get deliveries from other restaurants like these guys would be doing. R and R in Cambridge started out this way. Now they have a full kitchen. (30:05). We have a great story to tell in Pocomoke City. He knows they will follow the code and he put them in contact with April Payne regarding liquor license requirements.

Commissioner Choquette said that he has no question that it would be good for the town; his question is if this type of business fits into what the zoning code requirements are without serving food; does it meet the definition of a restaurant. If Burley Oak would come here, would it qualify as a tavern permitted only in the B-2 zoning district. We have a B-2 and B-1 district. Mr. Nordstrom said that is for the city to decide. We need to help new, fresh businesses exist. From where he sits, new business creates tax revenue that fixes streets, fixes pipes, tears down old buildings. We all want to see a revitalized Pocomoke City. (34:01).

Jacqueline Cipriano, 144 Market St, owner of the old bank, she said that as an outsider who doesn't live in Pocomoke City, she is running into roadblocks when it comes to starting up a new business. She sees the potential for good businesses to have success here. Getting grant money, talking to the liquor board and other things she has tried to do are difficult. This is the perfect type of business and product as an anchor business for the town. She is looking forward to having this business as a neighbor. She doesn't see it as a problem if they start without a kitchen and may be able to expand.

Kelly Miller asked if she had any plans for her building. Mrs. Cipriano said she had a lot of ideas such as wine tasting, performing arts, art galleries showcasing talent, dancing, etc. It is not an uncommon thing that businesses such as this partner with food establishments and provide food. The city needs to open up and think about how to accomplish supporting new businesses. There isn't much going on downtown especially after 5 or 6 p.m. when their business would be in operation and the life of the town. The back street is nothing but empty. There is plenty of room for parking. The back street is nothing but empty. There could be diagonal parking on that street. She and her husband are both for the brewery. There are plenty of breweries that started with partnerships in serving food. Pocomoke has to be progressive. There are pop-up restaurants, food trucks and all kinds of things like that going on these days. (39:07)

Mr. Porter then asked for anyone to speak that is opposed.

Deborah A. Ullmann was sworn in. (39:52). Her office is at, 203 2nd Street, Pocomoke City, Maryland, is her business address. She lives in Chincoteague but owns a realty company and law firm in Pocomoke. She submitted a very detailed letter before the last hearing. Since then, there has been an amendment to the site plan proposal where they have removed the beer garden that was being partially built on her property and have not blocked the entrance to her parking lot. She is the owner of Deborah Ullmann Realty that owns the parking lot at the corner of Willow St and 2nd Street. It is directly behind a city park which is adjacent to the back portion of Cypress Roots property. She is also the owner of the law office of Deborah Ullmann at 203 2nd Street across the street from the parking lot. The amendments that were made alleviates the blockage of her entrance and exit of her parking lot; it creates another issue. If the Board allow this business to go forward without requiring additional parking, it makes it impossible to block entrance onto her property. Where people would normally be able to put up a chain link fence or other barrier to block the driveway, she cannot because it is a communal curb cut for both her parking lot and the backside of their property. There is a new idea in their business plan about food trucks but no plan presented to where a food truck would park. On Willow St, there is no parking at all back by where the former church was located. On the corner of Willow and 2nd St, there is an electric pole with a weird wire coming down, where there is no parking from the pole to the corner. There might be one space near the curb cut between Cypress Roots and myself. Between a fire hydrant and the pole there might be three spaces back there on Willow Street. 2nd St is a one-way street, so there is no parking. Market Street is used by other retail businesses. She believes that even with the modifications, there are still parking issues. (43:24)

She filed an application in advance because she wasn't going to purchase the property without variance approval, she was required to have two off-street parking spaces available. Mr. Dunn was the owner. She was not going to purchase her property with getting approval of the variance. She had a rental agreement for two

parking spaces across the street to meet her parking requirements. After Property, in the area of her property, was rezoned as residential and not commercial, the parking requirements changed. A parking lot became available, which she purchased and made improvements. She has been a responsible owner. She is in favor of economic development in the city, she has invested in and improved property in Pocomoke. She was required to have off-street parking and it did not seem unreasonable to her. She did as was required. Mr. Brandewie was not employed by the city in June of 2017 when she dealt with the city. Different interpretations are being applied currently to Cypress Roots then were applied to her in 2017. The staff report says that in Business B1 Districts, parking is not required. She respectfully disagrees with that interpretation, parking is necessary. By not requiring parking, people will park where parking is available and she will have to assume liability and make them leave her property which will involve police and towing, possibly towing contracts and no parking signs. She will incur the costs. The owners of the business who are profiting from the business will not be liable or incur the costs. She has had bad experiences with parking before. When she bought her first house near Federal Hill in Baltimore, in the beginning there was parking. As time went on, more cars came in and parking was not readily available. One Saturday, someone watched her haul in groceries while being double parked, after that she began looking for a new house. Her requirement was that the house have a driveway. That is why parking is important to her. The city needs to plan for the future. All the business needs to have available parking and incur the cost for parking. She is asking for denial of the conditional-use unless there is adequate parking. She also thinks that there should be a provision prohibiting the beer garden due to access-egress at the rear of the property. There are not sufficient curb-cuts. There are only 2 for 5 businesses. There should have been one for each business but that is something historic that the city can review.

She was required back in 2017, when she applied for permits and variances, when she purchased her building in December of 2017 but had a hearing in June of 2017 (43:29). An application was filed in advance because she was not going to purchase the property, the law office that I renovated without the variance because we were subdividing and making the lot smaller. It was not given in writing but I know, because 2nd street was one-way that to provide two off-street parking spaces. She cited an email between her and Mr. Dunn who was the owner of the parking lot across the street. Because of the City requirement of two parking spaces, there was an email exchange in January of 2018. She purchased it in December of 2017. One month after purchasing the law office we had a rental agreement for two parking spaces across the street. After 205 2nd Street, which is the house, historically known as Dr. Nock's resident, her law office was known as Dr. Nock's office. After Dr. Nock's residence was reclassified as residential and not commercial, Mr. Dunn and his company had no need for the parking lot across the street for a commercial spot, so she purchased the parking lot. She improved the parking lot and paved it and got rid of the eyesore. She has been a responsible owner. That what's the Board needs to do. She is for economic development for Pocomoke an invested in Pocomoke and improved the property. You have to do what is responsible and when the City of Pocomoke told me that she needed two off-street parking spaces that was not beyond unreasonable to her. She complied and got more money and bought the parking lot. Mr. Brandewie was not employed by the city at the time in June of 2017 when she was dealing with this and the interpretation that was applied to her is different than what was being applied now. They are saying in the staff report, you don't need parking if you are in the B-1. She disagreed with that interpretation. You do need parking. She reiterated what was in her letter that basically by not requiring Cypress Roots to provide their own on street parking the City is transferring an obligation and liability to me and people are going to park in the parking lot right around the corner from Cypress Roots. She will have to get them off her property to decrease liability that will involve police intervention, towing and possibly tickets; she will have to have a contact with the towing company. She is to be the one to incur the costs of no parking signs and enforcement of them, so the interpretation of the city is causing a load on the City police department and on her. And the owners of the property who are profiting from this business, are not experiencing any of those costs. While the interpretation that was given to her to provide two parking spaces, she incurred that cost and provided this service for my customers. (48:30)

She proceeded to tell a personal story where she had purchased a row house in Baltimore in 1985. It was a row house. The neighborhood became yucky and parking became outrageous. She ended up having to park five blocks away from my house and I had to double park to get groceries in my house. That was the last straw. She then moved to Federal Hill and had to have a driveway. That's why parking is important for her. We all want economic development but we need to interpret the statues and impose the cost of their

parking on the companies that have customers. She is not a beer drinker. She is asking for denial of this conditional use without any parking provided. Ultimately there should be provisions that there are no beer gardens in the future unless other permissions are granted. There are five buildings one of these is the old banks, in addition to the Chinese store. She proceeded to discuss curb-cuts as it relates to these properties. She again requested denial of the application. (52:47).

Chip Choquette asked when the house next to her was rezoned as residential. Was it recent? Ms. Ullmann said 205 ,2nd Street was rezoned before she purchased her property. It was in 2019, she believes before she purchased hers. Chip Choquette said that her concerns are well heard but he doesn't believe that a business in the B-1 zoning is required to have off-street parking. Ms. Ullmann said she was told differently when she purchased in 2017. Mr. Choquette wondered if there was a change in the zoning since then and it would be helpful to know that.

CL Marshall commented that the cleanup that she did on the corner lot is an improvement. When she purchased the property, was she aware of the shared curb cut rear egress? She had conversations with Mr. Dunn, who she purchased the property from, said it had always been a shared curb cut because of the lack of them.

No one else spoke in opposition. Mr. Porter asked if there were anyone that needs to sign-in. The sign in sheet has been circulated. Mr. Porter read the names of proponents and opponents; Opposed-Mona Margarita, Deborah Ullmann

Proponent-Jacqueline Cipriano, Roy Koonz, Josh Nordstrom, Vanessa Allen, Tommy Gladding, Jessmin Duryea, Frank Hawk who stated he was the architectural designer of the project. (56:48)

No other letters were received and no one on the internet commented.

Opponent testimony closed.

Applicant Rebuttal

Warren Keith Willey II said that he and Jessmin acknowledges the concerns that Ms. Ullmann has regarding curb cuts as well as the liability to her property. They are aware of the type of clients that this type of establishment brings forward. They are trying to bring the community together and bring everything up instead of tearing it down.

Jessmin Duryea, 12 Front Street, Pocomoke City, was sworn in for testimony. Mr. Duryea said that they have met with her informally. She has sent us letters in the past over her parking lot. We have through the appeal process, removed the beer garden to resolve these issues for her for the time being but will revisit this with her in the future. We are not opposed to helping her with signage. We have offered to provide signage for her to keep people off her property. They also proposed and these are all on record between a formal meeting with us. We also met with her and to pay for and provide signage for her no parking signs on her property. We also offered to put in a curb cut for her on her property in exchange for the piece of property, the wedge shape you see there to help us in the future for the beer garden. When we first opened up with the meeting, she wanted us to enter into a rental agreement. They felt that there was plenty of parking that didn't require her parking for our establishment. So, we denied that rental agreement. They understand the other liability issues and stuff and want to address that with her. (101:16) But after we had talked about rental agreement, she had everything we offered was off the table, off the book, she didn't want to do anything. So, we have tried to work with her to resolve these issues. The best thing for resolution was to remove the beer garden and resolve other issues in the future. So, for now she has the communal curb cut and we can work out something to keep people off her property and we can have surveillance as well. (1:01:42)

Kelly Miller asked what hours are your business. Mr. Duryea answered when the first start approximately 10 or 11 o'clock at night at the latest and opening probably about 11 AM.

CD Hall asked if all patrons would be limited for access from Market Street. Only employees would use the rear entrance. Mr. Duryea answered, yes.

David Strauss asked the Planning Director, Mr. Brandewie if the beer garden were to added later on, would require a separate permit. Mr. Brandewie said it could go back to the Board of Appeals as an amendment to the site plan, as an additional related conditional use. So, in my opinion, it would have to come back for Board consideration.

Chip Choquette said he would just like to add that in the code it looks like there is a conditional use for outdoor cafes as well. (1:03:24).

Mr. Porter stated there everyone has had an opportunity to speak unless the Board has questions of anyone. Hearing none, we should close the public hearing.

Chip Choquette said that prior to closing the public hearing, this is the first case he was going to make a decision on. What's the next step following that?

Mr. Porter stated that once we close the public hearing, you can then discuss the testimony that you've heard at this point in time and then come to a decision as to whether or not you should grant the conditional use or not. He advised Mr. Marshall to close the public hearing.

CL Marshall stated they would close the public hearing portion of this. (1:04:37)

CD Hall said he was confused what parking, is it going to be required or not required as to a legal question?

Mr. Porter stated that's a decision for you. There is no requirement at this point in time in the B-1 District. CD Hall asked for retail? Are retailers segregated from other types of businesses? Mr. Porter stated for any type of business in the B-1 district so it doesn't matter what type of business it is. It's not required.

CL Marshall stated there is no required off-street parking.

CH Hall stated that stated that in the real code or perceived code to be there was nothing required to provide that in the B-1 district (1:05:33).

CL Marshall stated that was surprising to me as well. He stated that there are two public parking lots and plenty of space in front of the storefront that will provide adequate parking.

Kelly Miller stated she agrees.

CD Hall stated that the second question is that this business these men are going to operate does it meet the definition of a café, restaurant or whatever.

CL Marshall stated that is something that he went round and round on. He knew of other establishments that operate the same way within the same county under the same licensing procedure and is something he was comfortable with. (1:06:17)

Chip Choquette stated he wanted to add to that as he was reviewing the most recent county rules that he could find, in the 2017 that I found that at a restaurant, two categories, 6 and 7-day license holders, and aside from that, the 70 seats, they have like a daily receipt requirement and in once case sale of food at greater than 33 percent of total daily receipts. In the other case, a serving proportional meal, from menus, at least twice having the daily receipts of food in excess of that from the sale of alcohol, so he was inclined to lean toward the definition from the County whereas we don't have one. His other concern is in the code itself, between B-1 and B-2, it specifically says in the B-2 district about taverns and serving alcohol, and allowing for that kind of use in B-2. So, it's an intentional omission and we want to not allow that; so, he agrees personally with everything that's been said by the proponents, and it would be a very positive thing, he doesn't believe the

definition of a restaurant based on the way the code is written, he doesn't believe that it's allowed in the B-1 district once the code is written.

CL Marshall stated that he definition of a restaurant and it being omitted by that may well be not an oversight but deliberate and definition of a café could have been one without alcohol as well.

Kelly Miller stated that Mr. Dan said they he felt it that it met the spirit of the definition of a restaurant. ((1:08:26).

CD Hall asked that when the Pocomoke City built the building and leased it to the present Dockside, is there any special exception or anything that had to be acquired in order to operate that as a restaurant and serving alcohol.

CL Marshall said that when it comes to the alcohol serving permitting thing, I don't think that this Board should be involved with. They probably have a 7-day class C license if he had to guess and possibly their parking was satisfied by the public parking across the street. (1:09:20)

CD Hall asked Mr. Choquette that his interpretation of the code was you can serve alcohol in the conduct of the restaurant. So, the question is, is this a restaurant.

Chip Choquette stated that even though the county doesn't go to this detail he thought that it meant that every restaurant would have to prepare the meals on-site. He thought it's a great concept of on-site versus bringing in outside food, but he didn't think our code allows that. He thought it should. He thought they should transpose the letter O from the B-2 district up to the B-1. But the other hang-up I have of that is that the town doesn't allow taverns near houses in a B-2, but it also requires it to be more than 200 feet away on a street; that's why he asked the question to Ms. Ullmann, is that a house now. If that is a house now, and the business is less than 200 feet away, so even if you were to take inspiration from another section of the code, you are still in violation of the spirit of that because it requires more than 200 feet away. So, when he reviewed the zoning amount prior to this meeting, I saw that it was a business but if that is a house now and not a business, an actual residence, so that it will violate the spirit of the code in that aspect as well.

CL Marshall discussed the house adjacent to the law office, on 2nd Street and the question of distance and whether it should be measured to verify if there was 200 feet or less in distance.

Chip Choquette stated he wanted to be in favor of it but had issues with the code the way it was written. CL Marshall called for the question. (1:11:55).

CD Hall asked if that would create a legal issue at a later date if we are approving something that is a violation of the existing code,

Mr. Porter stated that you are approving, at this point, a conditional use. You have the right to approve the use at this point. If it violates other sections, that is something that will have to be looked into when the conditional use permit is taken care of.

Mr. Porter stated that the structure Mr. Choquette was talking about was a Bed and Breakfast. At that point it was still being contemplated that it was a zoned business at that juncture. When the law office was subdivided off by Mr. Dunn and the house was done at that point, he believed that is when some of the issues arose regarding the change in zoning or what occurred at that point in time. The requirements as he recalled, because he couldn't find the information, regarding the building and subdivision, that a possible issue arose of possible parking at that point between Mr. Dunn and Arapahoe. Ms. Ullmann was never involved in any of that. This was a separate issue between Ms. Ullmann and Mr. Dunn. But all negotiations of any requirements regarding that subdivision related to Mr. Dunn and Arapahoe Realty had nothing to do with Ms. Ullmann at the time other than she was purchasing the property. But he believed that was part of the issue because of the

fact that the building was being used as a Bed and Breakfast. Mr. CD Hall didn't recall it being a Bed and Breakfast. Discussion followed. (1:14:50)

Chip Choquette asked about appropriate licenses and that led into his research into about applying for a license and the definitions of a restaurant.

Kelly Miller stated she just looked up in a dictionary the definition of a restaurant. It says a business established where a meal or refreshments may be purchased. It does not say it has to be prepared there. It is according to Websters. They may not be making it there but people can still purchase food at that property. It says where it can be purchased there, it doesn't say that the business has to sell it.

CD Hall: But not to be purchased from the owners' property.

Kelly Miller: Yes, it just says where it can be purchased. It doesn't say that the business has to sell

it. Chip Choquette; From a legal standpoint, you are purchasing it from another business.

Kelly Miller stated that right, but if you are paying on your phone, you're sitting in the restaurant, I mean it's a technicality.

Dave Strauss: Potato chips are considered food?

Kelly Miller: yes.

Chip Choquette: That's where the city code really needs to define the restaurant. The county has done it so there is legal precedent elsewhere. It seemed to be a big question in Baltimore when they were re-opening after COVID. Some restaurants were taverns. And the legal definitions were very mixed up. He just doesn't feel it meets code.

CL Marshall called for a motion: (1:17:40)

CL Marshall stated a motion that to vote to allow Cypress Brewing Company, by Willie Strategies LLC requesting a conditional use permit and variances to produce and sell alcohol, beer, and provide some food service with the construction of a microbrewery located at 148 Market Street in Pocomoke City.

Kelly Motion stated she will make that motion. CD Hall seconded it.

Acclamation: Hall-yea, Miller-yea, Strauss-yea and Marshall-yea, Choquette-nay; 4 in favor, 1 opposed, motion carried.

CL Marshall stated that he would encourage the owners to take a hard look at your food service operation, it would benefit your business, there to work with your neighbors to enhance that and have some pre-products, have something else in there and would be better for everyone involved. Also, he strongly suggested that you establish some relationship with Ms. Ullmann and find some common ground there. (1:19:11)

Mr. Porter stated that we will be getting a formal written opinion out within the next 10 days. Anybody who is opposed to the decision has the right to file an appeal to the Circuit Court of Worcester County. All those avenues are spelled out in our code. He asked for addresses if anyone wants a copy of that opinion.

Approval of Minutes from March 9, 2022

Motion to approve minutes from March 9, 2022 (Hall, Miller)

Acclamation: Choquette-yea, Hall-yea, Miller-yea, Strauss-yea and Marshall-yea; 0 opposed, motion carried.

Election of Chair and Vice-Chair

Tabled

Other Business

Mr. Porter said he remembers when legislation was presented for a zoning text amendment that updated conditional-use for microbreweries and distilleries and those types of business. It would be beneficial to review those changes from 2015. Adopting them could alleviate future business proposals.

Mr. Brandewie announced that if anyone wished to serve as an alternate Commissioner to please let him know.

Motion to adjourn meeting (Marshall, Hall)

Acclamation: Choquette-yea, Hall-yea, Miller-yea, Strauss-yea and Marshall-yea; 0 opposed, motion carried.

Approved: C.L. Marshall
CL Marshall, Chair, Board of Zoning Appeals

Approved: K. Michelle Beckett-El Soloh
City Clerk

Note: Minutes were prepared from notes and the Facebook recording of the meeting which can be found on the following link: <https://www.facebook.com/pocomoke/videos/522372256064811>. The point of recording from the Facebook link is shown in parenthesis.