

The regular monthly meeting of the Lower Burrell Planning Commission was held on Wednesday, February 17, 2016 at 7:00 p.m. in the Municipal Building at 2800 Bethel Street, Lower Burrell, PA 15068. Present were Ray Rieser, John Kamarados, Janet Ryan and Robert Liotta, Public Safety Director Councilman Grillo, and Ordinance Officer Michael G. Nedley. Absent was David Kristof.

MINUTES:

Motion by Mr. Liotta, second by Mr. John Kamarados to approve the minutes of the January 20, 2016 meeting. Approved.

CORRESPONDENCE:

None

OLD BUSINESS:

As per Zoning Hearing Board's request, we were asked to review and comment on the proposed Ordinance No. 1-2016, "AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE OF THE CITY OF LOWER BURRELL PERMITTING MICROBREWERIES, WINERIES, AND MICRODISTILLERIES IN C, COMMERCIAL ZONES, IN THE CITY OF LOWER BURRELL." When discussing this at our January meeting one of our members, Robert Liotta, cautioned that this matter may be much more complex than would appear at first glance. He was aware of problems that a neighboring community (Allegheny Township) is experiencing with one of these businesses (Wooden Door Winery) and potential costly litigation related thereto.

We decided to postpone our comments so that we would have time to investigate this matter in depth. Chairman Rieser contacted the Office of Chief Council of the Pennsylvania Liquor Control Board and spoke with attorney Norina Blym (717-783-9454). Chairman Rieser found that the laws governing microbreweries, wineries, and micro-distilleries are not located in a single place but scattered throughout the Liquor Code. Initially these establishments appear similar to a bar or a bar/restaurant which would be permitted in C2 and C3 districts, but there are a number of PLCB rules and regulations that are related to bars and bar/restaurants that do not apply to these establishments (see, PLCB "CONSUMING ALCOHOL ON BREWERY PREMISES Fact Sheet attached hereto).

The Liquor Code gives the Liquor Control Board the discretion to deny the transfer of any liquor license to a place located within 200 feet from any current licensee or 300 feet from any schools, hospitals, charitable institutions, public playgrounds or religious institutions. This provision is not applicable to microbreweries, wineries, and micro-distilleries. We feel that such a provision should be included as part of the proposed Ordinance No. 1-2016. In addition to providing a buffer zone around sensitive facilities, this rule would help to control the density of businesses serving alcohol in the community.

Another item of concern is the handling, disposal, and smell of materials used in and generated from the brewing and fermentation processes. This may be of considerable importance to owners of neighboring properties. We also believe that this matter should be addressed as part of Ordinance No. 1-2016.

Further, consideration should be given to those areas of potential regulation attendant to any use of this type (i.e., an establishment that serves alcohol), including additional limits on hours of operation,

property line setback requirements when abutting a residential property, areas of the site to be utilized by patrons (e.g., indoor vs. outdoor areas) and the like.

The Lower Burrell Planning Commission voted unanimously to recommend that microbreweries, wineries, and micro-distilleries be permitted in the Business Districts (including C-1, C-2 and C-3), by special exception only. This would give the City a greater degree of control over location and density of such businesses and the ability to impose conditions as deemed necessary on a case by case basis. This would also provide the neighboring property owners input via public hearings.

NEW BUSINESS:

Donald J. Martino appeared for the purpose of requesting a special exception to operate a used car lot at 1001 Greensburg Road, tax map 3 17-08-09- parcels 38, 39, and 40.

Mr. Martino stated that his business will be strictly devoted to car sales and that no repairs of automobiles will take place on site. This type of business is consistent with other businesses in this area. After further discussion a motion was made by Mrs. Ryan, second by Mr. Kamarados to support Mr. Martino's request for a special exception. All were in favor.

ADJOURNMENT:

With no further business, a motion was made by Mr. Liotta, second by Mrs. Ryan to adjourn the meeting at 8:17 PM.

Raymond Rieser, Chairman
Janet Ryan, Secretary



CONSUMING ALCOHOL ON BREWERY PREMISES

On May 30, 2015, a new regulation of the Pennsylvania Liquor Control Board ("PLCB") became effective. [40 Pa. Code § 3.93]. This regulation allows the holder of a brewery license ("Brewery License") to serve its own beer for consumption on the licensed premises. Previously, a brewery licensee had to also obtain a brewery pub license ("Pub License") in order to serve malt or brewed beverages (beer) for on-premises consumption.

- 1) What does the new regulation allow?
 - The new regulation permits a Brewery License holder to allow patrons to consume the brewery's beer on the licensed premises.
 - The Brewery License holder must have seating for at least 10 patrons, and must make food available for each patron if it is going to allow on-premises consumption of beer. The food can be in the form of potato chips or pretzels, or it may be prepared by the Brewery or by a third party.
 - On-premises consumption may occur only between 10:00 A.M. and midnight.
 - Tastings of beer are permitted on the licensed premises in accordance with the PLCB's regulations on tastings. [40 Pa. Code §§ 13.201, 13.211].

- 2) What is the benefit to obtaining a Pub License?
 - The holder of a Pub License is granted additional rights to that of a Brewery License. A Pub License holder may:
 - Sell alcohol from 7:00 A.M. until 2:00 A.M. Monday through Saturday [47 P.S. § 4-492(5)] and from 11:00 A.M. until 2:00 A.M. on Sundays (sales on Sunday may start at 9:00 A.M. provided the Pub License also provides a meal). [47 P.S. § 4-432(f)]. A Brewery License holder without a Pub License may only sell its own beer from 10:00 A.M. until midnight. [40 Pa. Code § 3.93(c)(1)].
 - Obtain an off-premises catering permit. A Brewery License holder may not obtain an off-premises catering permit. [47 P.S. § 4-446(b)].
 - Sell wine manufactured by the holder of Pennsylvania limited winery license. [47 P.S. § 4-446(a)]. A Brewery License holder may only sell beer it produces and owns.

- 3) Must a Brewery License holder have an amusement permit in order to provide live music and entertainment on the premises?
 - Yes. Section 493(10) of the Liquor Code states that it is unlawful for any licensee to permit dancing, theatricals, floor shows and motion picture exhibitions in licensed premises or places operated in connection therewith. [47 P.S. § 4-493(10); 40 Pa. Code § 5.31]. Webster's II New College Dictionary (Houghton Mifflin Co., 1999), defines a floor show as "a series of nightclub entertainments." Webster's defines a theatrical as "a stage performance." Thus, a performance to an audience would constitute activity that requires a permit. Section 493(10) does not permit an exception for Brewery or Pub Licenses.

- 4) Are Brewery License holders subject to protests from the local community?
- No. Unlike other sections of the Liquor Code, section 431(a) does not contain any proximity limitations on the location of a Brewery License. Therefore, the proximity limits are not applicable to the establishment of a Brewery License.
- 5) Are Pub Licenses subject to protests from the local community?
- Yes. The holder of a Pub License shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license, except as set forth in section 3.92 of the PLCB's regulations. [40 Pa. Code § 3.92]. Malt and brewed beverage retail dispenser licenses are subject to the proximity restrictions set forth in section 432 of the Liquor Code. [47 P.S. § 4-432].
- 6) Is a Brewery License holder permitted any additional licensed locations?
- Yes. A Brewery License entitles its holder to produce, manufacture, transport, sell and deliver beer. [47 P.S. § 4-431(a)]. A Brewery License holder is permitted two additional storage locations ["Storage Licenses"]. With regard to Storage Licenses, section 431(a.2) of the Liquor Code provides:

The board shall issue to a holder of a manufacturer's license no more than two storage licenses per manufacturer to cover storage facilities separate from the location of the manufacturing facility. ***A manufacturer may use its storage facilities to receive, store, repackage, sell and distribute malt or brewed beverages in the same manner as it can at its place of manufacture*** or it may rent, lease or otherwise acquire space from an importing distributor or bailee for hire authorized by this act in the same manner as an out of State manufacturer as set forth in subsection (a.1). A separate written application must be filed to acquire storage licenses, and the board is empowered to establish what information must be provided on that application. Nothing in this act authorizing off-site storage facilities for manufacturers is intended to make any change in the manner malt or brewed beverages are distributed through the three-tier system.

[47 P.S. § 4-431(a.2) (emphasis added)].

Therefore, a Brewery License holder may also sell beer at its storage locations with the same requirements and restrictions of the licensed premises (seating for 10, food available, etc.)

- 7) Is a Brewery License holder able to serve meals?
- Yes. A Brewery License holder must serve food in order to sell beer for on-premises consumption. The food shall be, at a minimum, potato chips, pretzels and other similar foods. [40 Pa. Code § 3.93(c)(4)]. A Brewery License holder is free to offer more food items than the minimum listed in the regulation.
- 8) Must a Brewery License holder obtain a health permit?
- While there is no requirement under the Liquor Code or PLCB regulations for the holder of a Brewery License to obtain a sanitary certificate prior to the issuance of a license, a Brewery License holder may be required to obtain clearance from its local municipality. Licensees are urged to check with their local officials and the Pennsylvania Department of Agriculture.

- 9) Are Brewery License holders exempt from "Happy Hour" restrictions?
- Yes. The Liquor Code and section 13.102 of the PLCB's regulations [40 Pa. Code § 13.102] set limitations upon the holders of "retail licenses." A Brewery License is a manufacturing license, so the Happy Hour restrictions are not applicable at this time. A Pub License is subject to the Happy Hour restrictions.
- 10) Are on-premises beer sales by a Brewery License holder subject to wet/dry restrictions?
- No. Section 472 of the Liquor Code provides a local option regarding the ability of the electorate of a municipality to vote on the issue of allowing the placement of a licensed premises to sell liquor, including wine, as well as malt or brewed beverages within the particular municipality. [47 P.S. § 4-472]. This section, however, does not provide such local option regarding Brewery Licenses.
 - However, Pub Licenses are subject to wet/dry limitations. Section 3.92 of the Board's Regulations provides that "[a] brewery pub license may only be issued in those municipalities in which the board may issue or transfer a malt or brewed beverage retail dispenser license." [40 Pa. Code § 3.92(a)].