

**MINUTES**  
**BUILDING CONSTRUCTION CODES COMMISSION**  
**January 27, 2014**

**MEMBERS PRESENT**

Mr. Fred Malicoat  
Mr. Jay Creasy  
Mr. John Page  
Mr. Richard Shanker  
Mr. David Weber  
Mr. Mike Rose  
Mr. Brian Connell  
Mr. Rob Jackson

**ALTERNATE MEMBERS PRESENT**

Mr. Greg Linneman  
Mr. Christopher Howe  
Mr. Chris Roberts  
Mr. Doug Muzzy

**I.) CALL TO ORDER**

MR. MALICOAT: Call the Building Construction Codes Commission to order.

**II.) APPROVAL OF MINUTES**

MR. MALICOAT: Everybody have a chance to read the minutes from the last meeting? Any comments, corrections, questions?

MR. PAGE: I didn't get any minutes, I guess.

MR. MALICOAT: If not, I'll entertain a motion to approve.

MR. JACKSON: Approve.

MR. MALICOAT: Okay. There's a motion. A second?

MR. CONNELL: I'll second.

MR. MALICOAT: Brian, thank you. Any discussion? All those in favor, aye. Opposed?

**(Unanimous voice vote for approval.)**

MR. MALICOAT: Okay. We have a new alternate to take over Rick Shanker's position. I'd like to introduce Chris Roberts. And then we'll let him be excused unless -- I'll just e-mail you everybody's name and then you'll have it.

MR. SHANKER: And phone numbers and all that.

MR. MALICOAT: And phone numbers.

MR. ROBERTS: Sounds fair.

MR. MALICOAT: And we'll go from there. You're welcome to stay if you'd like.

MR. PAGE: He can sit right up here if he wants. He can participate in the discussion. If you want to sit right up here at the table, we've got a spot.

MR. MALICOAT: Yeah. You can sit right there by Rob and Brian.

MR. SHANKER: Rob, you know --

MR. PAGE: Fred, you might tell him he can participate in the discussion. He just can't vote.  
(Multiple people speaking simultaneously.)

MR. MALICOAT: Chris, since you're the alternate and your representative is here, you can participate in the discussion, but you can't vote.

MR. ROBERTS: Okay. All right.

MR. JACKSON: Apparently I got one too.

### III.) PUBLIC HEARINGS

#### Case 14-001 H.A. Walther, for Dogmaster Distillery 210 St. James

**H.A. Walther, is requesting a variance to the 2012 International Building Code Section 903.2.1.2, which states in part "that an automatic sprinkler system shall be provided for Group A-2 occupancies where the fire area exceeds 5,000 square feet."**

MR. MALICOAT: Case No. 14-001, H.A. Walther for Dogmaster Distillery, 210 St. James. H.A. Walther is requesting a variance of 2012 International Building Code Section 903.2.1.2 which states in part "that an automatic sprinkler system shall be provided for Group A-2 occupancies where the fire area exceeds 5,000 square feet."

Okay. We have supporting documents. And, Phil, I'd like for you to give us a report first. You need to be sworn in. Everybody that would like to speak for this hearing, stand up, raise your right hand, be sworn in, please.

(Witnesses sworn in.)

MR. MALICOAT: Okay. Phil.

MR. TEEPLE: I'm going to start by passing out this document here. This is just a timeline of basically this project. I was just going to go over that briefly, give you guys some background and go from there. The case is Dogmaster Distillery. Van Hawxby is the owner and leases the premises from a Mr. Ott.

In January of 2013, we found out about some renovations going on in the building that were not permitted. Mr. Adair went by there and talked to the owner or the people doing the work. Mr. Ott said he had architects working on the drawings and possible tenant needing a variance to allow a distillery.

On January 22<sup>nd</sup>, we received an application for the demising wall to divide the suite and the electrical service. We did not receive drawings for that. On that same day, Nadine Davis issued a denial letter regarding zoning of the property because staff didn't think you could have a distillery in a C-2 zoned property.

February 12<sup>th</sup>, the Board of Adjustment approved the distillery in the C-2 zoning. Mr. Walther stated that his client did want to distill, sell liquor by the drink and sell it by the package and that the establishment would be more closely aligned to a cocktail lounge than a bar. Between February and June, me and Mr. Hawxby had numerous conversations and I kept saying we needed plans before we could approve any sort of liquor license.

In mid-June of 2013, we received our first set of plans for the project and sent out a comment

letter a couple weeks later. We received some revised plans in October -- towards the end of October. We commented that the fire area exceeded 5,000 square feet the building is approximately 7,200 square feet and so, therefore, the distillery and bar was disapproved.

On November 8th, I sent an e-mail to Mr. Howell discussing the difference between construction types and fire areas and let him know that if the choice is to do tastings and retail sales only, no liquor by the drink, basically no serving alcohol in glasses, then the liquor license on file would need to be withdrawn and a new application filed corresponding to the actual operations of the business.

Mr. Hawxby then revised the liquor license to remove liquor by the drink and the license was subsequently issued and approved. Mr. Ott made plans that corresponded with the use as tastings only, and we approved the plans. We had some conversations about the use of space as a bar is not a subordinate or supplementary part of the distillery, but a separate line of business.

We -- Mr. Walther told me the statement that the original intent was to use this as a tasting so we did issue a building permit. And in the middle of December we received a revised liquor license application for liquor by the drink and so I revoked the lien permit due to that. So basically the distillery and bar was disapproved.

So just to kind of give you guys an idea of how I arrived at my decision for this, the code doesn't actually provide a definition of an accessory use. So I looked through both the dictionary and the commentary. The commentary, of course very similar to the dictionary, states that the activities in the assembly space are -- well, are subordinate and secondary to the primary occupancy.

So the question is can a distillery function without a bar? Can a bar function without a distillery? You know, a bar purchases products from other businesses that are ready for consumption; the products of breweries, wineries and distilleries. So in my mind, these are two primary separate lines of businesses. Neither is accessory to the other.

MR. SHANKER: May I ask a question, Phil? On the 2/12, it's more closely aligned with a cocktail lounge than a bar. What's the difference?

MR. TEEPLE: I actually Googled that and I -- there's really not -- as far as I could tell, there was no real clear difference.

MR. SHANKER: Yeah, I don't think there's a difference. So is the appeal -- what is the appeal? What are they trying to do or not do?

MR. TEEPLE: Well, I'll let Mr. Walther --

MR. SHANKER: Okay.

MR. MALICOAT: Ready?

MR. WALTHER: I'm ready.

MR. MALICOAT: Okay.

MR. WALTHER: Okay. We're here today because my understanding of our current situation is that the City of Columbia issued a building permit for a distillery. And we did go through the Board of Adjustment process because this property is C-2, it used to be M-1. We down-zoned it to C-2 and then

the building owner wanted to put in this distillery and the City said, well, it's a M-1 use, not a C-2 use. So we appealed that decision to the Board of Adjustment. The Board of Adjustment agreed with us that a microdistillery, which is what this is, is an appropriate use in the C-2 zoning district.

I think the problem is -- and this is just a total aside, but I think the current zoning ordinance for the City of Columbia is a little outdated and it was created way before the idea or concept of a microdistillery was ever thought of by anybody. Having said that, the Board of Adjustment agreed with us. So we now have the zoning classification appropriate for a distillery and we began building. We get a building permit issued to do that that.

Then the question becomes whether we can use this less than 750 square foot space within the distillery for a tasting room. And I think Phil and I have a different opinion as to what constitutes a tasting room and that's, I think, why we're here today. I believe it's fair to say that Phil thinks that if you give away the product of the distillery, then that use is accessory and you can do it onsite and you can do it, I think, given the physical structure that we've built. And Mr. Teeple has some photographs he'll show you that show that. I do too. But that the City's position is if you get a liquor by the drink license, then that converts it from an accessory use to something else.

And I think the specific IBC classification is typically -- well, the question is what is an accessory use? And this is what Phil said in November. If my client gets a liquor by the drink license, then he's operating a bar, which is not a subordinate and supplementary part of the distillery. And I believe that's the City's position.

Now, the A-2 use exception -- ordinarily a bar is an A-2 use and it -- an assembly use, that's what A stands for, I believe, in the International Building Code. But there's an exception to it and it's in Subsection 3 of Section 303.1. And it says: A room or space used for assembly purposes, which is what a bar ordinarily would be, that is less than 750 square feet in area and accessory -- that's my emphasis -- and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

So we're appealing the City's determination that our intended use to sell alcohol in this small space as part of the distillery, we're appealing the City's determination that that's not accessory. So the question is, is selling it not accessory, but giving it away is accessory? Because the City's position is that if you give it away, it is accessory. So the question is why -- from our position is, why is it not accessory when you're charging for it as opposed to handing it out to somebody? So what's an accessory use?

Well, the City of Columbia in the -- Phil says this also on November 11<sup>th</sup>: The use of -- this is an e-mail -- the use of a space of a bar is not a subordinate or supplementary part of the distillery, but, in fact, a separate line of business. So if we're -- if the space is used to serve liquor by the drink, the space should be classified as an A-2 use. He goes on to say: If it's only used for tastings, this would meet the definition of accessory and the space should be classified as a B use.

Well, I guess our disagreement is that we don't think it makes any difference whether you sell it or give it away. You've got the same number of people doing the same thing in the same space, the

physical dimensions of the space haven't changed a bit. And we don't think that -- we think it's still accessory.

Now, I think there is a definition -- at least I found it online. I don't have an IBC book, but I found this that says IBC Section 508.3.1 defines accessory occupancies as those that are ancillary and accessory to the main occupancy of the building or portion thereof, which -- I mean that's not much of a definition, but that's what I found. Accessory is ancillary, subordinate, whatever term you want to use. They're all synonyms.

The City of Columbia defines -- in its zoning chapter defines accessory building or use -- and I just typed the part that deals with the use -- or a use customarily incident to the main use of the property. So is a tasting room where you're selling alcohol customarily incident to a distillery? Well, we don't have anything like that in the City of Columbia so I went to other cities. And I went to the city of Nashville, Tennessee's ordinance. And this is what ordinance B 12 -- well, this is the ordinance B 2012-204: Breweries and distilleries are a manufacturing use appropriate for the industrial zoning districts and the ability to sample the products onsite is an integral component of the brewery and distillery business. So customarily incident? I'd say Nashville, Tennessee thinks it is. And then Nashville defines a tasting room as an area within a distillery, including an artisan distillery which serves and sells products produced by the distilleries.

I also went to the City of Evanston, Illinois. And they define a microdistillery as a facility that produces alcoholic beverages in quantities not to exceed 5,000 gallons per year -- and I think that's about what we hope to produce -- and it includes an accessory tasting room. A tasting room allows customers to taste samples and purchase related sales items.

Ferndale, Washington: Microdistillery means a small-scale plant specializing in distillation. Such use shall be located within a restaurant or tavern building which a portion of the building is used for the production of alcohol for the wholesale distribution and for onsite retail sale.

Well, the point in showing these to you is that, in my opinion, at least based on my review of ordinances in other cities in the United States, a tasting room where you're selling alcohol is a customarily incident to a distillery. So if a tasting room in which you sell it is customarily incident, then it's meeting the definition of the zoning ordinance for the City of Columbia in terms of what constitutes an accessory use. So we believe that a tasting room is an accessory use to a microdistillery and the sale of products, in addition to giving them away, produced by the distillery does not change the character of that use. That's our position. Selling it doesn't change the nature of the use as accessory to the main use, which is our distillery.

So our request is for you -- we ask you to determine that a tasting room where distillery products are for sale or for sample is an accessory use to a microdistillery use and, therefore, regarded as a B use for which no separation is required.

Now, in order to -- this isn't -- we're not applying for a liquor license for you guys, but -- but here's what we're going to do and I -- and I've talked to the city attorney about this. We're -- we are going to

reapply for a liquor license. And the liquor license is going to specify that the only thing we're asking for is the right to sell products that are made at this distillery. In other words, there's not going to be any Budweiser, there's not going to be any wine. It's just going to be our distillery products. That's the license we're asking for.

We're also asking for a license that limits our seating capacity to 32 seats. There are 12 seats at the bar -- and I think you'll see pictures of that -- and there are going to be approximately 20 seats out to the side. So we're not going to expand that seating capacity. It will be 32 seats, no more.

Additionally, we will not operate after ten o'clock in the evening. So it's not going to be, you know, open until 1:30-type situation like Harpo's or Bengal's or any place else as a bar. Thursdays and Fridays will be 5:00 p.m. to 10:00 p.m. and Saturdays we'll have -- we'll open a little earlier but be no later than 10:00 p.m. And we may be open Sundays, but under any set of circumstances -- not at first, but under any set of circumstance, we'll never be open past ten o'clock.

With those limitations on our liquor license, we believe what we're saying to the City of Columbia is all we want is an opportunity to allow the public to come in and sample our products. Because what we want to do is sell, in a much larger scale, bottles and cases then -- then you're going to have -- then you're going to be able to sell in a bar setting. The bar is simply an opportunity for customers to acquaint themselves to this product and this product only. And because we're doing that, we think it's accessory to the distillery use. And under the 303.1.3 exception, it's a B use, if it's accessory.

This is my client -- my clients, Mr. and Mrs. Hawxby. And Van is here to tell you what his vision is for this particular business.

MR. SHANKER: Excuse me. Before you go, may I ask a question?

MR. WALTHER: Yeah.

MR. SHANKER: So I asked him what the appeal is based on? What is it that you want? You don't want to do one thing or something else or what is --

MR. PAGE: You mean what box is checked?

MR. SHANKER: Well, I see the intent of the code is -- I mean what is it -- is it the sprinkler system you don't want to have to do?

MR. WALTHER: There's one of two -- one of two changes would satisfy, I think, the City of Columbia. One would be a separation. And the second would be -- the second would be a sprinkler system. And we don't want to do either.

MR. SHANKER: So you're appealing -- you don't want to either sprinkle or have separation. Is that correct? Is that your appeal?

MR. WALTHER: Right. Right.

MR. SHANKER: Thank you.

MR. WALTHER: And given my understanding of the City's position is we don't have to sprinkle or separate if all we're doing is giving away our alcohol. But if we start selling it, then we do have to sprinkle or separate. That's -- that's the distinction.

MR. WEBER: One other question, Skip. I think the difference that -- I think one of the things that's probably tripping the trigger with accessory or not is -- I don't know if you've ever been on the bourbon trail or whatever in Kentucky and Tennessee --

MR. WALTHER: I've heard of it.

MR. WEBER: It's great fun. And those are not bars. You taste, you can buy all the liquor you want in the bottles you want, but they're not bars. And they're -- they're ancillary or an accessory to distilleries both micro like in Bardstown and giant distilleries. There's no bars.

And so are you guys selling liquor? If someone buys, I want three shots of bourbon? Or are you saying, I want a bottle of bourbon to take home because I've tasted this and I like it? It's a tasting room. Right? Not a bar?

MR. WALTHER: It's essentially a tasting room, but we're selling our product. We're not just giving it away.

MR. WEBER: In bottles?

MR. WALTHER: We're selling our -- yes, but they're tasting the product onsite.

MR. WEBER: Right. But you can't -- I mean --

MR. WALTHER: But we're selling --

MR. WEBER: Like I said, I don't know if you've been to --

MR. WALTHER: I have not.

MR. WEBER: -- distilleries where they have tasting rooms, but you can't buy shots of whiskey. You taste it and then you buy bottles and you leave or you hang out and look at bottles, but you can't buy shots of liquor in a tasting room in a distillery.

MR. WALTHER: You can in Nashville, Tennessee.

MR. WEBER: Maybe in the city.

MR. WALTHER: And I don't know whether that's on the bourbon trail or not.

MR. WEBER: You can't at Jack Daniels, those distilleries like that.

MR. WALTHER: Yeah. I didn't -- I was looking at city ordinances, not --

MR. WEBER: Right. But what I'm saying is, is that maybe Kentucky's a lot different than Tennessee, but I -- of all the places I've been to with bourbon, I've never seen a one where you could buy a shot of bourbon before. And I bought a lot of bottles, but -- but -- and I tasted a lot.

MR. WALTHER: That's why I brought up this Nashville, Tennessee ordinance because they define tasting room as one in which serves and sells products brewed by the distillery.

MR. JACKSON: So you want to serve as well on this property the product that you distill, both in glasses?

MR. WEBER: You may be right. Maybe all those in Kentucky are dry counties and that's why they're so freaky about --

MR. HAWXBY: Jack Daniels is in a dry county. There are other places -- you know, Milwaukee, Wisconsin there's a Great Lakes distillery there where they have a very vibrant bar onsite right next to

their distillery room as well. So it -- it's a new and emerging cottage industry.

MS. HAWXBY: And the idea is to make some very custom cocktails with the products so that folks can see how it can be used. So it's not like we're just going to be slinging rum and Cokes or anything like that. It's about having a very small, seasonal, custom cocktail menu so that if folks come in and they want to try something -- most folks, especially in the Midwest, do not just want a shot of bourbon. They want to know -- I -- I don't -- I'm with you too. I'm with you too. But I'm just saying they want to know -- that's not what they're going to serve to their guests. And so we -- our business model is about somebody is going to have a group of folks over for dinner on Saturday night. They go to the farmer's market on Saturday morning and they get all their ingredients because it's local and they want to do something really nice. They're going to get their liquor from us so that they can make martinis or cosmos or Manhattans that night. And so we want to offer them the opportunity to inform them and educate them about our products and offer them in a cocktail fashion that we would get paid for.

MR. WEBER: The reason why I'm asking these things, because that seems like the crux for this separation and sprinkler requirement. It's -- I mean it seems like both people are saying this is the whole issue. And so to me, if we understand exactly what you're doing, we can make a decision on that.

MS. HAWXBY: Absolutely.

MR. HAWXBY: This bar is my showroom. If you're selling windows and doors, you have a showroom. If you're selling cars, you have your showroom. Well, this is my showroom. And right next door just happens to be my manufacturing plant as well.

MR. MALICOAT: Brian.

MR. CONNELL: Skip, in your PowerPoint presentation do you have plans for this business?

MR. WALTHER: You mean physical plans?

MR. CONNELL: Yes.

MR. WALTHER: Mr. Architect over here does, Bill Howell. Here. Do you want to pass these out?

MR. CONNELL: You don't have them on --

MR. WALTHER: I don't. I'm sorry. He's got a bigger board he can show you.

MR. HOWELL: You can ask any questions if you have them.

MR. MALICOAT: Brian.

MR. CONNELL: Bill, just help me build this for my understanding here. The -- I understand that you went through a Board of Adjustment and you got a rezoning. What is the use or occupancy classification of the distillery?

MR. HOWELL: Well, look on the next page. It's F-1 for distillery and B for using that same exception that Skip has shown the -- what would be an A-2 area is a B area because it's under 750 square feet.

MR. CONNELL: Okay. So -- all right. So you got your breakdown right here.

MR. HOWELL: Yeah.



MR. CONNELL: What is your -- you have 7,255 square feet. This building -- I'm sorry.

MR. HOWELL: And the building -- the wors—where our tenant --

MR. CONNELL: What's the address?

MR. HOWELL: 210 St. James.

MR. JACKSON: Which street is St. James?

MR. SHANKER: It's over by the old gas company.

MR. HOWELL: Right. It's a pre-engineered metal building.

MR. MALICOAT: Excuse me. Wait a minute. I forgot to go over the rules. There's only one person that can speak at a time. There's a lady here trying to type every word we say and that will get very confusing. So one at a time. And you have to raise your hand, get permission. This is just like school.

MR. PAGE: You're the teacher.

MR. CONNELL: So we've got a single-story 7,255 square foot building. And is that the entire building?

MR. HOWELL: Yes, it is.

MR. CONNELL: So you're not subject -- no separation?

MR. HOWELL: No separation.

MR. CONNELL: And you've got a F-1 use and you're proposing that this is an accessory and it's a Type 2-B structure not sprinklered. And what is your occupant load? How have you calculated that? Where do I see that?

MR. HOWELL: I still have that -- I'm not sure I -- that portion I didn't have on there. I have it on the other. I'll have to ask to submit that. There are -- this is a summary of my -- there's -- this is Talking Horse Productions, which is an A-1. So that governs the amount of square feet that I can have, which is 8,500 for A-1 non-separated. Bulk Riders has -- that's a --

MR. CONNELL: For clarification, Bill, we do have multiple tenants, multiple occupancies in this building?

MR. HOWELL: Right. They share bathrooms.

MR. CONNELL: So the 7,255, is that just --

MR. HOWELL: Yes, it --

(Multiple people speaking simultaneously.)

MR. CONNELL: Are these areas separated at all?

MR. HOWELL: No.

MR. CONNELL: Non-separated?

MR. HOWELL: Non-separated, yeah.

MR. CONNELL: Okay. I see. So the distillery is only asking for 2,700 square feet?

MR. HOWELL: Right.

MR. CONNELL: Okay.

MR. HOWELL: The total occupant load of the -- of the building -- well, is 181 for the whole building Yoga Sol is 25. The rest of them are 156.

MR. CONNELL: And for the 181 total, I assume that includes the 32 that Skip referenced as --

MR. HOWELL: Right. Yes.

MR. CONNELL: -- would occupy the tasting room?

MR. HOWELL: Yes.

MR. CONNELL: Okay. Do we have adequate egress for 181 people?

MR. HOWELL: Yeah. You have a door here, door here, door here, door here, door here, door here, door here (indicating). Each door, you know, is 180 so it's --

MR. CONNELL: 160. Right?

MR. HOWELL: Yeah.

MR. CONNELL: Okay. I'll give the floor up to Richard.

MR. SHANKER: I'd like to hear what the fire guys have to say about it, please. Whether they're paying for booze for not paying for booze, there's still people.

MR. FRAIZER: Well, so you know how we go at this, the Building Site Development determines the use group and then we apply the fire code accordingly. So based on Building Site Development's determination of the use group, we would agree that sprinkler or fire separation needs to be in place.

MR. HOWELL: That would be if -- if they determine it as an A-2 use?

MR. FRAIZER: Correct. And again, Building Site Development will determine the use group and then we apply the fire code accordingly.

MR. HOWELL: That would be called an A-2 -- that's the whole crux this; if they sell liquor versus just taste liquor.

MR. SHANKER: May I follow up?

MR. MALICOAT: Sure.

MR. SHANKER: Do we have the ability to change the group or are we here as judge to say whether it is an A-2 or not? I'm just kind of confused. I mean there's going to be people there. They're either going to get free drinks or not free drinks.

MR. MALICOAT: Well, like Brad said, it's a classification -- building classification and you have to apply the appropriate codes. So determining the building classification would be a key issue.

MR. SHANKER: But we are deciding whether they have to sprinkle or not sprinkle.

MR. MALICOAT: It's according to the building classification.

MR. SHANKER: Correct. But from what I'm understanding, you're not -- you're appealing to us for those two things. You're not appealing for a difference in the classification, are you? I mean I don't see that on any of the applications.

MR. WALTHER: Well, I --

MR. MALICOAT: Skip, do you want to explain that? And then Brian has a comment to make.

MR. HOWELL: Can I speak too?

MR. MALICOAT: Go ahead, Bill, while we're waiting.

MR. HOWELL: If the exception 303.1.3 were -- we applied that in my code review. And it's the definition of accessory that we think that if you sold the drinks that are made through the -- from the alcohol that's made by the distillery, that would be accessory. Then that area becomes that -- under 750 square feet area becomes a B use group and there is no A-2 use group in the building. If it's determined that that's not accessory and that the only way that they can serve drinks is to give them away, then we have to do that.

MR. SHANKER: So --

MR. HOWELL: So there's -- either way, we're never going to be an A-2. If we do an A-2, we would sprinkler or have a fire barrier wall and then we would make it -- you know, then we would make that whole thing an A-2. That's the only way that we could do A-2.

MR. WALTHER: Richard, the second-to-last paragraph of the appeal, that's not the -- I submitted one in English. Not that one. The next one. There you go. And I was asked to use the blank forms, which I thought I was using and modified it on a computer. But the second-to-last paragraph specifically asks for this group to determine that our use is a Group B use because it's an exception to 303.1.3 of the IBC.

MR. SHANKER: Thank you.

MR. MALICOAT: Yes, sir. State your name, please.

MR. RICHEY: For the record, I'm Steve Richey, I'm an assistant City counselor. One of the things to not get confused over is the liquor laws in Missouri are as odd as Kentucky's and Tennessee's and everywhere else. There's no definition of a tasting room in Missouri. It's -- it's all about how it's presented. Tasting -- I've had conversations with Liquor Control. A tasting is completely free. There can be no exchange of money. Okay?

So if that's what they wanted to do, it's literally you give away the alcohol until you sell it in a bottle. And then they can do their wholesale in the big 50-gallon jugs or whatever. But liquor by the drink is liquor by the drink. And that's whether it's strictly their product or everybody else that makes liquor if they brought that in.

So, you know, don't -- don't lose sight of the fact that they really want a -- I mean obviously a restricted liquor by the drink license, but it's a liquor by the drink license. And I think that plays into how the City's arrived at their decision that that's not truly an accessory use because you see that different things have to be brought in to do that. I think if you were strictly doing a tasting room, all you need is glasses and maybe a place to sit. I don't know. But so there is -- there is that distinction and that's what it would be, would be a true liquor by the drink license. They couldn't get a tasting license and operate the way they do. That's how Hy-Vee can do tastings because they're giving it away.

And you'll notice that -- well, you guys don't have any materials, but a liquor by the drink license is -- I had notes. It's 3- or 400 dollars, maybe even more than that, and a tasting license is \$25. So even the State recognizes the difference and it's just -- we confuse the terms. I mean I didn't really grasp it

until we got into this business, that tasting is truly different than liquor by the drink. So that -- that's where that came in. That's -- that's all I have to say about, you know, tasting.

And I would -- I would ask Brad maybe to expound a little bit more about the loading of that area based on the number of people in square foot and how that impacts how it -- how it gets classified or how it's treated once it's classified as that?

MR. FRAIZER: Well, there's a -- there's a quantity of flammable liquid in the building. I think this is your question. You'll have patrons that may or may not be familiar with the layout of the space. In those types of environments, especially when they're not familiar with the space, it's different than a -- than a work space where you're there all the time and you're familiar with the exits and the layout.

So that's what typically -- and you guys as co-commissioners know this as well, that's what typically drives some of those restrictions with some of those types of use groups, if that's what you're asking. You've got other spaces adjacent that may or may not be occupied, large fire area so --

MR. RICHEY: Does the number of seats play into it or is it strictly by the square footage that's there?

MR. FRAIZER: Square footage.

MR. RICHEY: So they could jam in as many bodies in that square footage?

MR. FRAIZER: No. There's an occupant load. And that's what we -- that's what we sign off on. You'll see occupant load signs all over the town. We'll determine the occupant load first based on how it was designed and the egress and the use.

MR. MALICOAT: Dave was first.

MR. WEBER: What is your -- are you a friend or are you a representative?

MR. RICHEY: I'm the City --

MR. WEBER: You're a City employee?

MR. RICHEY: City attorney.

MR. WEBER: City prosecutor? You're a City attorney?

MR. RICHEY: City attorney.

MR. WEBER: Just wondering.

So I wanted to -- so I can wrap my mind around this. Brian, when you were looking at this, do you see a way to reasonably parse this space or is -- there's no way around the fact that it's this issue? Because I'm having a hard time here because, let me tell you, I'm looking at Flat Branch and I'm seeing a bar. And everybody would agree to that. Right? But they make -- they make beer.

This is totally different than that because I'm looking at the layout, the specific layout. That's what's so hard about this because, you know, it doesn't matter whether I want to go there or not. I do. Right? That's irrelevant. My point is, is how do you interpret this with the code? Because I'm looking at Flat Branch as a bar. This isn't a bar, you know.

MR. WALTHER: Flat Branch is more than 750 square feet. And the definition of accessory -- the exception in 303 of the IBC, you start with that. It's got to be less than 750, has to be.

MR. WEBER: Prison Brews is very small. But it's a bar, you know, it's a microbrewery. This is not like that. And that's why -- my gut feeling is I want to say this is very appropriate for downtown use for what they're doing. And that may be jaded by the fact I'd like to go there, but -- but I'm just wondering -- yeah, I'm not getting shaky yet. I'm just wondering, Brian, is there something that's -- or is it just that? I mean have we -- have we seen it right architecturally? It's just the accessory issue?

MR. CONNELL: Well, my line of questioning was to try to determine how this structure would function from a life safety standpoint. Just push way all the other is it for sale, is it free? That doesn't really matter. Look at it is an A-2 use group perhaps and then take it through the series of tests, if you will, in Chapter -- of Section 303, which grants this variance or this exception to classify an assembly space that's smaller than 50 people or less than 750 square feet as a B use group. It clearly says before that at 303.1 -- and I'm reciting from the code book -- that it references all assembly uses; including purposes such as civic, social, religious functions, recreation, food or drink consumption. So it's capturing the idea that it's -- that these exceptions refer to an A-2 restaurant, nightclub.

Am I answering your question? What I'm looking for here is total building area to determine that, in fact, it is a mixed -- it's a non-separated, mixed use building. When we look at just the -- the distillery, in fact, it has three what appears to be very compliant means of egress in remote locations. So egress for this -- this facility looks very adequate. So I think as far as that goes, if you -- what was the -- I'm sorry, Bill. What was the most restrictive use of the building?

MR. HOWELL: A-1.

MR. CONNELL: A-1.

MR. HOWELL: Right. I believe that the A-1 had 8,500 maximum square footage.

MR. CONNELL: So all of the uses meet the criteria for mixed use, non-- for non-separated, mixed use; meaning you take the most restrictive and apply it to the whole building and it still complies with that. So other than this interesting matter of interpretation, the building meets all the criteria for allowing it to exist in this way. So it really is going to come down to do we share the concerns expressed by Brad that regardless of what you call this area, people are possibly impaired, they may not be familiar with their surroundings in the event of an incident, you know, those kinds of things. So --

MR. MALICOAT: Rick?

MR. SHANKER: If this part of the entire building is sprinkled, does that mean the whole building has to be sprinkled? Didn't we run into this little nightmare before?

MR. HOWELL: The entire fire area must be sprinkled which would mean the entire building.

MR. SHANKER: Because there's no separation?

MR. HOWELL: Right.

MR. SHANKER: May I follow up? Is this building under construction? Is it done or is it just being built?

MR. WALTHER: The building has been there for quite some time. The interior is being rebuilt.

MR. SHANKER: What's the cost of separating it in terms of fire separation?

MR. WALTHER: About \$11,000.

MR. SHANKER: And what is the cost of sprinkler?

MR. WALTHER: About \$32,000.

MR. SHANKER: Does that include the whole building or just this part?

MR. WALTHER: I think that's the whole building.

MR. MALICOAT: Yes, ma'am.

MS. HAWXBY: And the part about the safety issue about folks not being familiar with the space, part of the tax code says that bonded and non-bonded product cannot be together. And so there will be a barrier space where production is happening that will not be -- it will be a space that folks that obviously see because we want them to see what we're doing, but it's not going to be a regularly used space because we have to be very particular in our accounting.

So there will be a barrier that will not allow public to just roam around in the entire space because we obviously have some manufacturing standards that we want to keep to as well.

MR. MALICOAT: Chris.

MR. HOWE: And was that the chain link fence I saw mention of in the --

MR. HAWXBY: Yes.

MR. HOWE: Yeah. And the actual comment I had was the initial -- when the liquor by the drink license was first issued -- and it's more, I guess, directed at Phil -- was the concern that that would then open up the door to any type of bar or tavern occupying in the space?

MR. TEEPLE: That's certainly part of the issue. We -- the only liquor license that was issued did not include liquor by the drink, but that is part of -- if this becomes -- you know, we don't know if the distillery is going to be successful or the bar's going to be successful. You know, it's --

MR. HOWE: Right.

MR. TEEPLE: We get one bite at the apple. Obviously I think if there are some restrictions put on that so that, you know, it's clear that this space cannot be used as a bar -- there have been a lot of questions raised here, a lot of good issues, but we see this as a bar if you're serving -- if you're serving liquor by the drink. Regardless of whether you're paying for it or not, people are imbibing large drinks of alcohol.

MR. HOWE: Sure. And just a follow-up comment that with the new restrictions that they brought today that weren't told to us ahead of this meeting, the 32-capacity limit and things like that, I feel a lot more comfortable granting a variance I guess it would be or -- or agreeing with the B type if -- if I were a voting member today.

MR. SHANKER: Are there smoke detectors or any fire alarm systems in your space?

MR. HAWXBY: There's smoke detectors. And I'd be more than happy to work with the fire department to add more if --

MR. SHANKER: My concern is I don't like -- let's just say you're denied the appeal and you have to sprinkle. That means everyone around you has to sprinkle and I think that's -- I just got a problem with

that politically. Not to -- not to say that the -- it has merits, but I'm trying to seek some kind of solution where we can protect the public but not make everyone else in the whole place have to sprinkle. And I just didn't know what you guys thought about that, my fire gurus.

MR. FRAIZER: About sprinkling just the --

MR. SHANKER: Well, whether it's -- he has smoke detectors, but there are also other types of things you could use for fire, like heat sensors and all that. Correct, Fred?

MR. MALICOAT: It's not a code requirement though for his application.

MR. SHANKER: Correct. But in lieu of one thing, perhaps we could negotiate something that would provide the public with safety and not put something on the rest of the building that really isn't necessary.

MR. MALICOAT: John.

MR. PAGE: Phil, whether they sell it or give it away, that doesn't change anything, or it does?

MR. TEEPLE: Well, my opinion is a tasting is a sampling of a small amount of liquor, not sitting at the bar drinking a mixed drink or, you know, large quantity of alcohol versus, you know, a bar -- to me a bar is you are having, you know, large drinks and you're there for a lengthy period of time.

MR. PAGE: If you're giving it away, you're not going to be giving very much away. If you're selling it, you could be selling a lot of it. So it does change --

MR. TEEPLE: Sure.

MR. PAGE: So it does change how you look at it.

MR. MALICOAT: Mike.

MR. ROSE: I have been in this facility and the egress on it is very easy to see. As far as the smoke alarms, I did not see those in there, but doesn't mean they're not there. But I think that as far as being able to see what you're doing, it's open enough that you can see any given door at any time.

MR. MALICOAT: Dave.

MR. WEBER: How do we -- is there any way -- and we've talked about this so many times in the past. How can we -- can we practically do something so that if the occupants or the owner or something changes, that we can re-look at this? Is there a way to do that? I know we've talked about that that's very difficult to do or something could be put in the, quote, file or something like that, but that seems, if it's possible, very appropriate. And if we could do that, I'd make the motion right now to grant it.

MR. MALICOAT: Excuse me. Do you want to answer that, Phil, or do you defer?

MR. TEEPLE: I'm still thinking about it.

MR. MALICOAT: Okay. Skip.

MR. WALTHER: Well, the reason that -- we're telling you and we're telling the City that when we reapply for the liquor license, we're going to ask for a liquor license that permits us to sell only Dogmaster Distillery products. And we expect if we get -- if this group agrees with us, we expect the City then to issue us a license that is restricted to the sale of Dogmaster Distillery products. So if we go out of business, there's no liquor license. It can't be -- and any new user has to apply for their own liquor

license. And they're not -- and the City's only giving away a liquor license to sell Dogmaster Distillery products, not -- so I mean I think that -- that, to me, solves the problem.

MR. WEBER: That's a great answer to the question. I appreciate that, Skip. Because I -- I didn't know that. I don't know anything about liquor licenses so I'm learning.

MR. WALTHER: And may I just say I appreciate Phil's interpretation of what a tasting room is and Steve's discussion with Liquor Control. Looking online at what a tasting room is, it varies. There isn't one definition. The City of Nashville, Tennessee, as you can see, has a different definition because it's -- it specifically says it can sell products produced by the distillery onsite.

And if you look at -- and I didn't do this and I guess I should have, but if you look at the winery websites -- and there are wineries all over the United States -- some tasting rooms only give away the wine, some tasting rooms give it away and sell it. It just varies by facility. It varies by the city. It's -- there is no one -- there is no one definition.

So when Phil's -- when Phil says that's how he interprets tasting room, he's not alone. There are lots of other people in the United States who agree with him. There are also a lot of people in the United States who agree with my position, that you can sell. So that's why we're here. That -- I mean I don't -- I'm -- we're trying to make it as restrictive as possible because we've certainly recognized the life safety issues.

MR. MALICOAT: Rick?

MR. SHANKER: Whether it's Tennessee or Sturgeon, it really doesn't matter to this board, quite honestly, in my opinion. And my concern is whether you're giving it away or you're charging, there are still people there. So I was curious to know, once again, isn't there an enhanced fire system that can be put in? In other words, instead of just smoke detectors, aren't there infrared that go in the ceilings to detect heat?

MR. FRAIZER: Well, you're talking notification versus suppression.

MR. SHANKER: Correct. Right. And do you have notification or you just have smoke detectors? In other words, if your smoke detectors go off, does it call up the fire department or a service or anything like that?

MR. HAWXBY: Oh, they'll know. I'm only a block away.

MR. SHANKER: Well, Brad's asleep probably sleeping most nights so he'll never know.

MR. HAWXBY: No, they do not.

MR. SHANKER: I -- this is a tough one, as everyone is agreeing, but I still don't see the difference whether people get killed tasting or paying for it. It doesn't matter. We need to have protection for the people here.

So I would be up for -- I don't know if you were entertaining this or not, Dave, something that's more enhanced than just smoke detectors. I don't think it's fair to the building or the other occupants to sprinkle the whole building. So I would like to make a motion to grant the appeal with an enhanced fire alarm system. Just to get this ball rolling off center.



MR. MALICOAT: Brian.

MR. CONNELL: I'll second his motion so we can have some discussion.

MR. MALICOAT: Okay. Let's discuss. Go ahead.

MR. CONNELL: What I'd like to add is -- this is a segue to one of my favorite topics, which is Chapter 34. So I'm going to ask the architect, have you considered looking at this building from an existing structures standpoint doing a compliance on terms of evaluation?

MR. HOWELL: Well, I thought I was conforming to the code as a new building. So to that extent, the answer's no.

MR. CONNELL: I'm going to speculate a little bit. Based on my experience and trying to evaluate all the different occupancies that are in there, it's very likely that with a -- as Rick put it, an enhanced fire alarm and detection system, a Chapter 34 compliance alternative would probably pass with flying colors because --

MR. SHANKER: It is not a new building. This is an existing --

MR. CONNELL: This is the former MME building is --

(Multiple people speaking simultaneously.)

MR. SHANKER: Would it fall into 34 again is what I'm getting at?

MR. CONNELL: It would. And, again, it may not be necessary to go there if we make the right kinds of recommendations. But I think at this point rather than make the applicant go through that process and delay all this, it -- it probably makes sense to make a recommendation. And I don't -- is it appropriate to ask the applicant if they'd be willing to consider something?

MR. MALICOAT: Sure. You can ask them anything.

MR. CONNELL: They can only say yes or no.

MR. SHANKER: Are there a set of plans?

MR. CONNELL: Would you be willing to implement a fire alarm protection system in lieu of sprinkler and fire separation?

MR. HAWXBY: Of course. Yeah.

MR. CONNELL: Yes?

MR. HAWXBY: Yes.

MR. MALICOAT: Rob, are you thinking of something in the nature that you might see over a grill, how you see a suppression system that they could know that --

MR. CONNELL: No. I'm thinking a fire alarm or --

THE COURT REPORTER: I'm sorry. I can't hear you.

MR. MALICOAT: Excuse me. Just a second. Rick, don't roll the plans out.

Okay. Go ahead. Speak up though.

MR. CONNELL: I'm answering Rob's question about what am I referencing. And what I am proposing is a fire alarm and detection system throughout this space that would include the detectors and it would include the orange strobes -- orange strobes and notification.

MR. FRAIZER: We would encourage you to include as much specificity on -- I mean try to more define that as much as you can what you're asking for.

MR. CONNELL: Okay. And I'm trying to do that. I'll hand it back to Rick for a second.

MR. SHANKER: I was just looking here to see if the emergency exits are on the plans and if there's emergency lighting that's adequate. There's plenty of companies in town that can do this for you. You could submit it to Phil with the understanding of what we want. He's pretty easy to get along with sometimes.

MR. MALICOAT: Phil.

MR. TEEPLE: Brian, when you said throughout the space, you do mean the fire area. Correct?

MR. CONNELL: Actually, I'm referring to the distillery.

MR. TEEPLE: So throughout the suite. Because we do have an adjacent theater in the dark and some other occupied -- there are some buildings that are occupied.

MR. CONNELL: I tend to agree. I think it's unfair to have to go in and disrupt existing adjacent tenants. I'm referring to this distillery.

MR. TEEPLE: And the common space that's shared by all the tenants?

MR. SHANKER: Excuse me. It was my motion and it's just for the applicant. They share restrooms, you say, Phil?

MR. TEEPLE: And the common space.

MR. SHANKER: Which is where?

MR. TEEPLE: The double doors at the front of the building right where they've got the six tables shown on the plans.

MR. HOWELL: I think it's been identified that that common space is pretty much going to be used by our -- specifically going to be used by Talking Horse Productions. And the common area that will be used by the distillery will be the two bathrooms, for what that's worth. Can you see it on the plans? I can show it to you.

MR. SHANKER: I'm not clear. I don't see double doors.

MR. PAGE: You've got your hand on it. That's the six tables.

MR. SHANKER: So it's all this (indicating)?

MR. HOWELL: This is the shared space, this is the shared bathrooms, this space is being used by Talking Horse (indicating).

MR. SHANKER: Are they able to use it here (indicating)?

MR. HOWELL: They can get there if they want to.

MR. TEEPLE: This is the common space (indicating). And I believe that was included as part of the lease agreement. And these are some other pictures of the -- of the area, the suite.

MR. SHANKER: Well, my motion would include the spaces that you guys tend to use, period. So if it's a shared space, people are still -- could be in jeopardy. And it's not going that big of a leap to do the shared space and the bathrooms as well as your space for what it's worth, in my opinion.

So that's -- Brian, I don't know if that's what you had in mind when you seconded it, but that's what I had in mind.

MR. CONNELL: I'd be willing to amend my second to include the common spaces. And I have a question for Brad. Can you help us be more specific with a reference to --

MR. FRAIZER: I think the common area is a good -- include the common area where it's, of course, being shared. Smoke detection, a monitored fire alarm system and visual and -- and audible notification.

MR. MALICOAT: Rick.

MR. SHANKER: Fred and Brad -- yeah, Brad. Aren't there infrared though also? Smoke's different from infrared, isn't it? In other words, heat buildup or not?

MR. FRAIZER: There's heat detection and smoke detection.

MR. MALICOAT: Right. But the heat's going to notify you probably not as soon as the smoke detector would.

MR. SHANKER: Okay.

MR. MALICOAT: Brian.

MR. DAVIDSON: I was just going to clarify, I think you're referring to projected beam smoke detector. And they're generally applied in areas where you have like a large atrium. And the reason why they do that is they have don't have a ceiling that allows for the smoke to bank so, therefore, it can detect the smoke instead of the fire.

MR. SHANKER: May I follow up? So does this provide a pretty good solution for public safety?

MR. FRAIZER: It would provide early notification.

MR. SHANKER: Okay.

MR. MALICOAT: Any other discussion?

MR. JACKSON: I had a question.

MR. MALICOAT: Rob, I'm sorry.

MR. JACKSON: No problem. The Talking Horse Productions, at any time would they be potentially having an assembly while you would be brewing, distilling or operating your business?

MR. HAWXBY: They would be.

MR. JACKSON: Comment? My concern here is again safety. And while the distilling operations are going, should something happen and go wrong, even though we have notification, and that thing decides to go south, that we'd have a lot of people in there. Early notification, yes, but a significant lack of suppression while people are still trying to get out and potentially intoxicated.

MR. MALICOAT: Bill.

MR. HOWELL: One quick comment. You know, this is an issue that we addressed earlier in our, you know, meetings we had, but the high alcohol content fluids are contained in a -- in a cabinet that are designed, you know, to be -- to have a fire rating, et cetera. So the bottom line is having the two things adjacent to each other is according to code and, you know, that cabinet takes care of that. I didn't notice

that to begin with, they corrected me on it so we got that taken care of. So that's my comment on that issue.

MR. MALICOAT: Any further? Dave.

MR. WEBER: Do we need to amend that motion? Is that how this works?

MR. CONNELL: Do you want to take --

MR. SHANKER: Amend it in what way?

MR. WEBER: To include -- or did we just flesh it out? I just want to proceed. I think we're ready for a vote. I'm just bookkeeping.

MR. MALICOAT: I think Brad and Brian clarified the fire alarm items and it was included in Rick and Brian's motion.

MR. SHANKER: Right. I think so. And also, if this doesn't work for you, you can also come back to us again. No, I'm serious. This isn't set in stone. This is just a way to get it done, hopefully.

MR. MALICOAT: John.

MR. PAGE: For the record, restate your motion so we all know --

MR. SHANKER: Motion to grant an appeal with the stipulation that a fire/smoke notification system be installed in the Dogmaster proper and any shared areas that would be used by any Dogmaster customer. Is that what -- is that --

MR. CONNELL: I think that's straightforward.

MR. CREASY: Does that include the lights at the doors?

MR. SHANKER: Lights at the doors, emergency exits. I assume there's emergency exits there now.

MR. MALICOAT: They're already in place.

MR. HOWELL: They're already --

MR. MALICOAT: Okay. Anything else? All those -- yes, sir.

MR. RICHEY: If I might, is the intent of your motion to declare that bar space accessory and thus, it falls into the B use so that it doesn't require sprinkling? Because that's the nature of the appeal, is that the accessory use designation is improper. Not -- not what kind of work-around there can be, but whether or not that's an accessory use or not.

MR. SHANKER: My motion in no way, in any way reflects on that one way or the other. My motion is just to try to get public safety.

MR. RICHEY: Okay. Well, the question before the board is, is it or is it not an accessory use.

MR. MALICOAT: Dave first.

MR. WEBER: This really pains me that I might agree with Mr. Shanker on something, but -- but I don't think that this board is intended to be lawyered into a box. We're intended to get the solution that is an impasse between the City and code and the way it's written. And I think it's very appropriate for a group of lay -- non-lawyers to try to -- to solve this impasse and I don't think it's appropriate at all unless we want to vote on that particular issue. I thought we were going to vote on them using the space the

way they wanted to do with appropriate lights, safety kind of fashion.

And I -- I don't really like the way you're trying to box in the -- the Commission like this and it changes the game all of a sudden. Now, we were going to vote on an appropriate sort of way for them to use the space and now we're backing out saying, hey, are we saying this is A or not. And I don't think I'm voting on that.

MR. MALICOAT: Rick.

MR. SHANKER: In answer to your question, or if I may add to it, there are three -- three or four different means to challenge a ruling, and they've chosen interpretation of code. And what we're saying is -- or what I'm saying is I can't do that, but I might be able to offer a suggestion that would provide the true intent of the code, which is public safety.

So I'm not -- and I don't mean to be a smart ass like this guy, but what we're trying to do is provide public safety and not infringe on anyone else's right to do business. So I hope that answers some of your questions.

MR. RICHEY: I'm just pointing out what the appeal was, you know. The board --

MR. SHANKER: The true intent of the code, in my opinion, is for safety, period.

MR. MALICOAT: Any other comment? All those in favor of granting the appeal, raise your right hand if you're eligible to vote.

(Show of hands.)

MR. MALICOAT: One, two, three, four, five, six, seven, eight. Okay.

Opposed?

(Show of hands.)

MR. MALICOAT: One, two.

You needed six favorable votes. I'm sorry. So you got eight. So congratulations and good luck.

#### **IV.) NEW BUSINESS**

##### **Knob and tube wiring discussion**

MR. MALICOAT: Any further business here? We've got knob and tube wiring discussion. Rick?

MR. SHANKER: We're going to table that, aren't we, Phil? The knob and tube thing? I can just mention to you what -- just give it two minutes -- give me two minutes and we can get out of here.

Recently Kurt Lichty (phonetic spelling) and I were at a job where there was a small fire in the building and it came to our attention that there was knob and tube in the building. Knob and tube is a way people used to wire buildings. They strung wire -- this kind of wire (indicating) that's actually coated with red on top and a rubberized coating in it. They'd wrap it around knobs when they had to go parallel to something, say, off the wall. Then when they went through a building, they used these tubes.

And it came to our attention that it's illegal to insulate over this stuff and the house had insulation on it. So we're going to look into this, maybe come before buildings and codes. Because if you have a fire at a certain spot and the whole building's illegal, we're wondering if the City should be able to say you got to change all of it versus just that part that we reconstruct. But we're going to table it, aren't we, to talk

about it amongst ourselves? But that's what we'll bring back, knob and --

MR. PAGE: NEMO Insulation won't insulate over that without boxing over it.

MR. SHANKER: Right.

MR. HOWE: Not everybody knows that.

MR. SHANKER: Well, homeowners don't.

MR. PAGE: NEMO won't do it. Another insulation company might, but NEMO won't do it. Rob won't do it.

**VI.) ADJOURN**

MR. MALICOAT: Okay. I have no other old business unless anybody else does. We could adjourn. Thank you.

(The meeting was adjourned at 5:38 p.m.)

(Off the record. )