

## Department of Permitting & Inspections

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** October 5, 2021  
**RE:** ZAP-21-14; 716 Pine Street

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**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: E-LM Ward: 5S

Owner/Appellant: 716 Pine Street, LLC / Donna Church

**Request:** Appeal denial of zoning application for new main entrance to the building and change of use to food & beverage processing (brewery with tasting room).

**Applicable Regulations:**  
Article 12 (Variances and Appeals)

### **Background Information:**

The appellant is appealing denial of a zoning application for renovations to the commercial property at 716 Pine Street that includes some exterior entryway work and an interior reconfiguration to expand the food & beverage processing use (brewery) and related tasting room. The exiting "Great Northern" café space is to be absorbed into the expanded brewery.

The zoning application denial was based on expansion of the interior tasting room and the applicable standards for cafes and restaurants.

**Recommendation:** **Uphold application denial** as per, and subject to, the following findings.

### **I. Findings**

The subject zoning application was filed August 11, 2021 and was made complete August 25. As part of the application, the existing brewery would expand into the space presently occupied by "Great Northern" café. The brewery production space would expand and so would the related tasting room. Total brewery space would be 28,942 sf, including 4,986 sf for the tasting room.

The brewery is "food and beverage processing" as defined in the CDO: The preparation and packaging of food and/or beverage (including alcoholic and non-alcoholic) products for distribution and/or wholesale or retail sales, on or off premise, excluding restaurants and cafes except as an accessory use.

Breweries commonly have accessory tasting rooms – spaces wherein patrons can purchase beers made onsite along with food service.

Within the E-LM zone, wherein the subject property is located, cafes are permissible whereas restaurants are not. As such, within this zone, breweries may have accessory cafes but not accessory restaurants. The CDO defines café as: Any food service establishment subject to Vermont Health Regulations containing less than or equal to 2,000 gross square feet where food and beverages are prepared and served for consumption either on or off premises. Restaurant is defined as: Any food service establishment subject to Vermont Health Regulations where food and beverages are prepared and served for consumption primarily on premises; and where the service of alcoholic beverages is incidental to the consumption of food (less than fifty percent {50% } of the gross sales receipts from the business).

As a matter of practice, tasting rooms associated with food and beverage processing uses have been treated as accessory cafes in the E-LM zone. Citizen Cider is permitted with an accessory café of 1,568 sf, and Burlington Brewing was recently permitted with an accessory tasting area of 2,000 sf. No specific tasting area was included in permit documents for the subject brewery when it was first established or through several subsequent alterations. A tasting area did not appear on floor plans until June 2018. At that time, a zoning permit was issued to establish an interior lab space, and the floor plan happened to note a tasting area (no square footage noted). More recently, a zoning permit was approved October 2019 to install four silos in the rear parking area. Plans for that project happened to note a 2,285 sf tasting area that was not caught as part of review for the requested silos.

Interior reconfiguration, including the tasting area, was expressly part of this latest zoning application. The floor plans clearly detailed the requested reconfiguration, including a 4,986 sf tasting area with related food service. Following correspondence between staff and the applicant as to the size problem with the tasting area, the zoning application was denied August 31, 2021.

**Reasons for Denial:**

The proposed renovations for the food and beverage processing facility (micro-brewery) include a 4,986 sf interior space for a tasting room with food service for patrons.

Food and beverage processing is defined in Article 13 of the Comprehensive Development Ordinance (CDO) as: The preparation and packaging of food and/or beverage (including alcoholic and non-alcoholic) products for distribution and/or wholesale or retail sales, on or off premise, excluding restaurants and cafes except as an accessory use.

This property is located within the Enterprise – Light Manufacturing (ELM) zone. Within that zone, cafes are permissible, but restaurants are not. Cafes as defined in Article 13 are: Any food service establishment subject to Vermont Health Regulations containing less than or equal to 2,000 gross square feet where food and beverages are prepared and served for consumption either on or off premises. The proposed area for tasting and food service is treated as an accessory café for permitting purposes. Within the ELM zone, such areas are limited to 2,000 sf. Larger space becomes a restaurant and cannot be permitted within the ELM zone.

The applicant appealed the denial September 1, 2021 – within the 15-day appeal period. The appeal asserts that the tasting area is neither a café nor restaurant. It is only an “accessory” tasting area less than 25% of the total food and beverage processing use. Accessory is defined as: A use, building or structure that:

- Is located on the same lot as a principal use, structure, or building served;
- Is clearly incidental to and customarily found in connection with the principal use, structure, or building; and,
- Is subordinate in area, temporal extent, or purpose to the principal use, structure, or building served, and is not to exceed twenty-five percent (25%) of the gross area or sales of the principal use, structure, or building served.

The proposed tasting area is 17.2% of the total brewery area – less than 25%. It is larger than permissible for a café but small enough to be accessory. The appeal further points out that beer sales comprise the majority of gross receipts from tasting area sales. Therefore, the tasting area cannot be a restaurant as defined in the CDO.

A bar is defined as: An establishment, or portion thereof, subject to Vermont Liqueur Control Regulations and primarily devoted to the service and on premise consumption of alcoholic beverages, and where the service of food is only incidental to the consumption of such beverages (alcoholic beverage is greater than fifty percent {<50% } of the gross sales of food and beverages at the establishment).

While not asserted in the appeal, conceivably the tasting room could be viewed as an accessory bar. Like restaurants, bars are not permissible in the E-LM zone.

The Development Review Board has two basic choices here:

- Overturn the administrative denial and approve the tasting room as a bar – allowable only as an accessory use. As a primary use, it is clearly prohibited by Appendix A – Use Table in the CDO.
- Uphold the administrative denial and limit the tasting room to 2,000 sf so as to clearly remain within the permissible limits of food and beverage service entities in the E-LM zone.

Of the two, cafe standards are the most clearly permissible in the E-LM zone. Restaurants and bars are prohibited in the E-LM zone. Cafes are allowed. Cafes are limited to 2,000 sf and do not specify percentage food sales versus beverage sales. While the applicable zoning standards do not expressly address how to handle accessory tasting rooms, cafes are the best, permissible fit within the E-LM zone. They are an allowable, small accessory use that may support the primary food and beverage processing uses. Their small size is consistent with the intent of the E-LM zone to allow accessory commercial uses in support of the manufacturing, processing, and light industrial uses the district is primarily intended for.

## **II. Recommended Motion:**

Uphold the administrative denial of zoning application ZP-21-604, new main entrance to the building and change of use to food & beverage processing (brewery with tasting room).