

UNAPPROVED MINUTES
PLANNING COMMISSION

April 10, 2013

A regular meeting of the Planning Commission of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, at 7:00 p.m., on April 10, 2013, there being present the following members of said Commission, to wit: Vicki G. Daulton, Bruce N. Thomasson, and Samuel R. Carter, III (Terrance D. Murphy and Jimmy W. Robertson – absent); with Vicki G. Daulton, Vice Chair, presiding; together with James E. Taliaferro, II, Assistant City Manager and Executive Secretary, ex officio member of said Commission; Melinda J. Payne, Director of Planning and Development; William L. Simpson, Jr., Assistant City Engineer; Benjamin W. Tripp, Planner; Judy L. Hough, Planner; Mary Ellen Wines, Deputy Zoning Administrator/Secretary; and William C. Maxwell, Assistant City Attorney; and the following business was transacted:

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, SECONDED BY COMMISSION MEMBER CARTER, AND DULY CARRIED, the minutes of the regular meeting and work session held on February 13, 2013, were approved as written – the roll call vote: all present - aye.

In re: Hold a public hearing to consider the request of Roger E. Warner, property owner, and John M. Pritchard Jr. and Marinda Vess-Pritchard, contract purchasers, for the issuance of a Special Exception Permit to allow a used car sales lot and automobile repair services, Major on the property located at 1206 West Main Street (Tax Map #s 29-1-5, 10, 11, & 12 and 35-1-1 & 3)

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Roger E. Warner, property owner, and John M. Pritchard Jr. and Marinda Vess-Pritchard, contract purchasers, for the issuance of a Special Exception Permit to allow a used car sales lot and automobile repair services, major on the property located at 1206 West Main Street (Tax Map # 141-2-2); and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the March 27 and April 3, 2013, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed March 29, 2013; and

WHEREAS, staff noted the following: the subject property consists of .53 acres located on West Main Street between Salem Auto Service and Richards Auto Alignment; the property is currently zoned HBD; the applicants currently operate Salem's Finest Collision Center at this location; this request is for a Special Exception Permit to allow a used car sales lot and automobile repair services, major; the applicants state that they would like to transfer their used car dealership license to Salem as they have sold their business in Roanoke; in addition to the used car sales lot, they would like to be able to rebuild vehicles as well; in accordance with Sec. 106-400, this development will require a site plan, and may require storm water management, landscaping, and other improvements; and

WHEREAS, John Pritchard Jr., contract purchaser for the property at 1206 West Main Street, appeared before the Commission in support of the Special Exception request; he noted that he and his wife had a car lot on Williamson Road in Roanoke that they recently sold; they still hold a valid Virginia Dealers' license and they would like to transfer that license to Salem to the West Main Street facility where they currently repair cars; he would like to open up a vehicle inspection service and also used car sales at this location; and

WHEREAS, Commission Member Thomasson asked if they were going to repair cars as one part of the business or would they be repairing cars that they ultimately end up selling; or would it be two separate businesses; Mr. Pritchard noted that it would be two separate businesses – right now they are operating as a collision center and they want to open up the car sales in a separate office space in the facility; and

WHEREAS, Commission Member Thomasson asked how many vehicles would they have available for sale, and Mr. Pritchard noted probably no more than ten vehicles; and

WHEREAS, Vice Chair Daulton noted it was the understanding of the Commission that they would be required to provide a site plan for the business and further, that they have agreed to providing landscaping with buffering, etc.; and

WHEREAS, no other person(s) appeared related to said request; and

ON MOTION MADE BY COMMISSION MEMBER CARTER, SECONDED BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Roger E. Warner, property owner, and John M. Pritchard Jr. and Marinda Vess-Pritchard, contract purchasers, for the issuance of a Special Exception Permit to allow a used car sales lot and automobile repair services, major on the property located at 1206 West Main Street (Tax Map # 141-2-2) be approved – the roll call vote: all present – aye.

In re: Hold a public hearing to consider the request of 17th Century Builders LLC, property owner, for the issuance of a Special Exception Permit to allow a two-family dwelling on the property located at 802 Tennessee Street (Tax Map #159-8-1).

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of 17th Century Builders LLC, property owner, for the issuance of a Special Exception Permit to allow a two-family dwelling on the property located at 802 Tennessee Street (Tax Map # 159-8-1); and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the March 27 and April 3, 2013, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed March 29, 2013; and

WHEREAS, staff noted the following: the subject property consists of .21 acres, at the southeast corner of the intersection of Tennessee and Sixth Streets; the property is approximately 100 feet by 90 feet; this request is for a Special Exception Permit to allow a two-family residence; the applicant states that the proposed structure would be similar to a single-family dwelling constructed in 2011 on a smaller lot to the rear on Sixth Street; in addition the applicant has noted that “the development is an ‘infill’ situation, in which the front of the proposed structure will align with the existing structures fronting Tennessee Street;” and

WHEREAS, Paul Brown with Parker Design, 816 Boulevard, Salem, representing 17th Century Builders, property owner, appeared before the Commission in support of the Special Exception permit request; he noted that the property is zoned Residential Single Family; at one point in time, this property was four 25’ lots; in 2006 Mr. Poff purchased one of the tax parcels which contained three 25’ lots and demolished the dwelling on the property at that time; in

2008 he was able to purchase an additional 25' lot but rather than build four small sized houses, they were able to come up with a configuration to create a conforming lot and a non-conforming lot that were less restrictive than the four 25' lots; in 2011 he constructed a dwelling that fronts on Sixth Street, and what he constructed on that lot represents one-half of what he is proposing to construct on the lot fronting on Tennessee Street; the other half of the unit would mirror it and connect the two garages side by side so the common wall would be a garage wall; in addition, the exhibit provided with the application shows the locations of existing houses that front on Tennessee and Sixth Streets; what they are requesting is to utilize the "infill" development to keep the proposed dwelling units close to Tennessee Street to be in line with the adjoining buildings; the house constructed on Sixth Street pretty much represents the type of construction that he is proposing on Tennessee Street; and

WHEREAS, Commission Member Carter asked if the existing wall between the two garages would have special specifications with regards to fire rating when there are two separate owners for each unit; Mr. Brown noted that anything the building code would require with regards to fire separation would be provided; and

WHEREAS, Vice Chair Daulton asked when they combined all the lots into one; Mr. Brown noted that they took four lots and resubdivided into two lots to make them more conforming; Mrs. Daulton asked if they sold the property on Sixth Street; Mr. Brown noted that the house on Sixth Street was sold; and

WHEREAS, Vice Chair Daulton asked if this would be rental or would it be sold; Mr. Brown noted that with a two family dwelling it is still one lot and one land owner; the property owner would have the potential to either live in one and rent the other or could potentially rent both sides; at this point, he would anticipate that both would be rental units, but he does not know; and

WHEREAS, no other person(s) appeared related to said request;

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, SECONDED BY COMMISSION MEMBER CARTER, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of 17th Century Builders LLC, property owner, for the issuance of a Special Exception Permit to allow a two-

family dwelling on the property located at 802 Tennessee Street (Tax Map # 159-8-1) be approved – the roll call vote: all present – aye.

In re: Hold a public hearing to consider the request of Briar Oak Investments IV LP, property owner, and Kick The Can LLC, lessee, for the issuance of an “Use Not Provided For” Permit to allow a brewery/restaurant/retail sales business on the properties located at 739 & 751 Kesler Mill Road (Tax Map #34-1-1 and 29-1-2).

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Briar Oak Investments IV LP, property owner, and Kick The Can LLC, lessee, for the issuance of an “Use Not Provided For” Permit to allow a brewery/restaurant/retail sales business on the properties located at 739 & 751 Kesler Mill Road (Tax Map #34-1-1 and 29-1-2); and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the March 27 and April 3, 2013, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed March 29, 2013; and

WHEREAS, staff noted the following: the subject property consists of two parcels of 1.81 and 1.28 acres, located on Kesler Mill Road adjacent to the Hanging Rock Battlefield Trail greenway and near the intersection with Garst Street; the property is currently zoned LM Light Manufacturing District; this request is for an Use Not Provided For Permit allowing the existing manufacturing business to also include restaurant and retail sales activities; the brewery portion of the business is a manufacturing use, and currently the retail and restaurant operations are of an incidental nature, some of which is permitted by state law; granting this use not provided for permit would allow those uses to represent a larger share of the businesses operations; the lessee plans to develop the property at 751 Kesler Mill Road to provide additional parking for the business; the following conditions were voluntarily proffered in a rezoning approved by the Salem City Council on February 12, 1979: (a) The topographical crest of the hill mass located on the westerly portion of the subject parcels which presently shields the view of property owners to the west will not be reduced in altitude; and (b) All reasonable efforts will be exerted to retain the trees which presently grow along the westerly boundary of the subject parcels to the end that the view of owners of property to the west will

remain screened thereby; this condition is, however, subject to the provision that the owners of the property sought to be rezoned may clear brush and other unsightly vegetation from their property and may plant additional trees; and

WHEREAS, Lezlie Bradley Snyder of 739 Kesler Mill Road representing Parkway Brewing Company and Kick The Can LLC appeared before the Commission in support of the "Use Not Provided For" Permit request; she noted that they really just want to keep doing what they are doing currently; they are primarily a manufacturing facility, and they are in light industrial zoning; but because of the recent changes with the state law regarding breweries they wanted to be able to have tastings on site; they have had a lot bigger response to the retail side of the business than they expected to have; so the request will allow them to continue to have the tastings and to accommodate the people who are coming to their facility for that; they do not plan on adding a restaurant or having late hours; they really want to keep the short hours early in the evening; they have no intention of late night hours; and

WHEREAS, Commission Member Thomasson asked her how they handle food for the business; Mrs. Snyder noted they have food trucks that are outside vendors that come when they are open; they do not plan on ever having a restaurant in the building; they would like to have some special events where they might have more than one food truck on site, but again they have no intention of getting in the food business; and

WHEREAS, Commission Member Carter noted that it sounds very exciting; he believes that this is a very good thing for the City; Mrs. Snyder thanked Mr. Carter and noted that they are glad that they ended up in Salem; and

WHEREAS, Laura Gentile of 716 Kesler Mill Road appeared in opposition to the request; she noted that she lives right across the street from the property; she is very excited that the brewery is across the street; however, one of her neighbors and her husband had an encounter with a gentleman that had been at the brewery who was very intoxicated and using foul language; the neighbor and her husband are now considering moving; Commission Member Thomasson asked what time of the day this happened, and Mrs. Gentile noted that this was between 6:30 and 7 pm; the reason she is here is that approximately one month ago the brewery must have had a band and the music was extremely loud because she could hear it in her home; she had to be at work the next day at 6 am and she wanted to go and ask them to

stop the music, but her husband did not think it was very wise of her; she did take some pictures last week of the parking situation; she noted that the parking is going to cause a lot of issues with people using the greenway trail; she stated that they did have someone directing people where to park, but if anyone has ever been on Kesler Mill after 5 pm, then you will understand how terrible it is to even try to walk on the trail; she noted that she believes the trail is a historic landmark trail, and she thinks the integrity of the trail will also be compromised; further, they cannot prevent people from urinating outside, putting trash outside, etc.; her concern is for the welfare of the public and her community; she is not against the brewery, and she is not against people coming in to do the tasting or to fill up their jars; she is definitely for small business as she is a small business owner; but the fact is that the parking is causing a pileup already; in addition she believes that the brewery is kind of taking away from the essence of her neighborhood with the parking situation, noise, public drunkenness, foul language, etc.; when the value of her home changes because of what is across the street, she wants to be able to come back to the City and remind everyone what she had said about the business and the issues; and

WHEREAS, Betsy Hanson of 4403 Old Catawba Road appeared before the Commission related to the request; she noted that she has a vested interest in 730 Kesler Mill Road, which is one of the adjoining properties to this property; she asked if they were not planning to have a restaurant, then why are they asking for an exemption for a restaurant; she is also concerned because a tasting to her should not mean you can get intoxicated and yet that problem is definitely going on; it seems that some people have tasted a lot more than just their own; she has no problems with the brewery because that business ends and goes home; we are now talking about changing it and if they get this exemption, they could decide tomorrow a restaurant would be a good thing; they would have a right to do this according to the request; then they will be open later hours; their property is the last property next to the manufacturing on the opposite side of the street, but that business goes home at a reasonable hour; these people are not and shouldn't be expected to; if people go out to have a meal and a drink, then they shouldn't have to be told they have to go home at 10 o'clock; the people who live in the neighborhood are not going to be very happy being kept up all hours like their neighbor when they have to go to work the next morning; she thinks before we step off the edge we

might want to think about whether this is the best location for them to do what they want to do; not the brewing part but all the other; she thinks it might be better to have the tastings at another location where they could have more freedom, more music, etc.; and

WHEREAS, Mrs. Snyder noted that she wanted to reiterate that they have no intention of having late hours; she further noted there was one night when one of the owners had a private party, and it went until about 11 o'clock and there have been repercussions from that evening; she stated that is definitely the exception and not the norm; they close by 8 pm on Thursdays and Fridays, and they close even earlier at 7 pm on Saturday; they do not want to compete with the other businesses in town that carry their beer and they do not want to be in the restaurant business; further, they are older people with young children and they want to be home at night; so those kinds of evenings are certainly the exception and they are doing everything they can to address the parking issue; they have someone out directing traffic and are working with the City to remedy the situation; she noted that they try their best to make sure that no one gets behind the wheel to drive that has had too much to drink; as far as people's behavior, they only have so much control over how people act when they walk out of their business; however, they do their best to keep everything low key; it is a family place and they invite people to bring their kids; they have even had birthday parties there; she noted again that they have no intention of being a restaurant; and

WHEREAS, Commission Member Thomasson asked how much control do they place on tastings; is there a limit to how much one can be served; Mrs. Snyder noted that they do not have any limits, but in general people will try the three or four beers that they are offering and if they like one, they will have a glass; most of the time people are coming in to buy the half gallon growlers and then leave; occasionally they have music and people will come in to hear the music and will stay for a couple of hours; they will have their lunch there and enjoy a beer or two while the kids are playing; they are not open late enough and long enough really for anyone to get very out of hand; she noted the one night they had the private event that ran late – it may have been a little loud for the neighbors and she apologized for that; and

WHEREAS, Vice Chair Daulton asked what days they have tastings; Mrs. Snyder noted that they are open Thursdays and Fridays from 4 to 8 pm and Saturday from 1 to 7pm; with the change in Daylight Savings Time, they have considered staying open until 8 on Saturdays; but

they do not want to be open any later than that; they anticipate having a few special events during the year but they would want those to be in the day time; these would probably take place during the day on Saturdays; and

WHEREAS, Commission Member Carter asked if she is saying they are willing to be restricted to not adding a restaurant and sticking to those hours; she noted that she could not personally say that for sure because they have a variety of owners and she is just one, but as far as she knows no one in their partnership has any interest in a restaurant; this is the reason they became a manufacturing facility, but the laws changed in July so that they could serve their product much like a winery and not have to serve food; and

WHEREAS, Vice Chair Daulton asked what size glass is used for tastings; Mrs. Snyder noted that the person gets three or four and the sample glasses are 4 - 5 oz. samples; the regular glasses are 10 oz. or a pint depending on the type of beer; they do their best to keep it under control; Vice Chair Daulton asked if they have live music or DJs, when they do have music; Mrs. Snyder noted that generally they have only had acoustic, except for the night of the private party; she believed there were electric guitars; in general, they have had acoustic or really low key music as they want to keep the noise to a minimum especially since people are talking; and

WHEREAS, Vice Chair Daulton asked if everything was contained inside the building; Mrs. Snyder noted that currently everything is done inside the building; they do have an outside space where they have picnic tables, and people do go outside to the tables; however, they have not had any live music or anything loud event wise outside; and

WHEREAS, Commission Member Thomasson asked if this was the first she has heard from the neighbors with regards to their disenchantment with the operation; Mrs. Snyder noted that this was the first she had heard; she further noted they were aware of parking issues and they had talked to the businesses across street and next door and worked with them to have people park in their lots, which they have allowed them to do; this was the first she has heard about loud, obnoxious people; the only thing they have heard from the neighbors was thanks for coming there – they have a lot of people who live in the neighborhood tell them all the time how happy they are to be able to walk down and spend

the afternoon; they like the sense of building community and want to work with everybody to make sure the whole neighborhood is happy; and

WHEREAS, Commission Member Thomasson noted he thought some of the incidents that have been addressed might be alleviated with security; have they considered hiring security to prevent folks who might be leaving the establishment less than capable of conducting themselves; Mrs. Snyder noted they have been providing their own security as they have hired extra people and people who already work for them to help monitor the parking lot, to make sure the people leaving have a designated driver; within their organization, they have definitely done this, however, they have not looked at any outside security firms; they have looked into surveillance equipment around the building to make sure people are safe; and

WHEREAS, Vice Chair Daulton noted that some times the surveillance equipment can curtail some activity that you do not necessarily want in a residential area; she noted that parking is also part of the request this evening and she did not know if Mrs. Gentile knew that the parking will be increased as well to try to alleviate some of the issues that they have had with parking in the past; Mrs. Snyder noted that this was correct; and

WHEREAS, Mrs. Gentile asked if this would mean that more people would be coming to the business because she has pictures of the parking if the Commission would like to see them; Mrs. Daulton noted that she could not say whether more people would be coming or not; in general they are coming before the Commission due to the issue with parking and they are just trying to relieve the problem; Mrs. Snyder noted that they have not done any advertising and have done nothing to encourage the people, and they just keep coming; people are excited about the business and it is a new thing, and she has a feeling there is going to be a lull and then there will be less people coming especially as the weather changes; but right now it is a new thing for Salem and people are very interested in the business; and

WHEREAS, Commission Member Thomasson noted the Commission is here for the request for an "Use Not Provided For Permit" for the existing manufacturing business to include a restaurant and retail sales; and

WHEREAS, Ms. Payne noted that she would try to clarify the request; when the petitioners approached the City, they basically came to us based on the need for more parking; they have some additional needs for the food and some of the other things so while we

were addressing the parking, staff decided to bring forward these other issues as well; but their main issue or concern is to try to fix the parking situation that currently exists because they realize it has created a log jam in the neighborhood; so they have worked out a parking arrangement on the property next door in order to bring the cars out of the neighborhood and onto property where they can control it; this is the genesis of what has brought them here this evening; and

WHEREAS, Mrs. Hanson asked if they only need parking, then they do not need the part of the request for the restaurant; she further asked if this was correct; and

WHEREAS, Mr. Taliaferro noted as the code is currently written, they are a manufacturing business that has a retail component that cannot exceed 10% of the floor space of the building; by the book, they can use a portion of the building for what they are talking about; they really need some kind of a definition that describes what they are doing with the business; the code was written for manufacturing and microbreweries and wineries where there are tastings, etc. we really do not accommodate that in our code; however, we are going to add it at some point but until we do that, staff thought it would be good if Parkway went ahead and obtained a "Use Not Provided For" permit which would make them legally conforming for what they are doing; Mrs. Hanson noted that this means a restaurant could be operated here, even though they say they do not want one at this moment in time; Mrs. Hanson noted that the code says they can do whatever they want with 10% of the building, but once they get this permit then they can use more than the 10%, is that not correct; Mr. Taliaferro noted that if you have a business that is a brewery/restaurant/retail, then it is permitted, but they would have to be that type of a business; Mrs. Hanson noted that if the current owners decide to retire and she purchases the partnership and decides that she wants to increase the restaurant side of it using the majority for a restaurant, this would be legal and she would not have to come back before the Commission; Mr. Taliaferro and Ms. Payne noted that this was correct; Mrs. Hanson noted that the restaurant part is the big sticking point; they have no problem with the microbrewery, and they are pleased they are working on the parking; further, the City needs to consider that this is next to a residential area and is the message we want to send that we want to turn this into retail and light manufacturing and

therefore, the property owners need to know that their houses are not going to be worth housing value; this is something we need to think about; and

WHEREAS, Commission Member Carter noted that this is one of the fastest growing things in the United States right now; is what Parkway doing any different than the others that we hear about; first of all with alcohol he usually feels like some food is kind of a buffer to the effect of the alcohol so he is hearing both sides of the issues; he asked if there were any restrictions on how much a person can drink in a tasting; Mrs. Snyder noted that there were no restrictions, however, as soon as someone appears intoxicated, they can cut them off just like any other establishment; Commission Member Carter noted that this is an exciting thing across the country, and it looks like there is a way this could be worked out; and

WHEREAS, Commission Member Thomasson asked if the petitioner was willing to proffer any conditions to the request; Mrs. Snyder noted that she did not have the power to do that; Mr. Taliaferro noted that the Commission and City Council on a Special Exception or a Use Not Provided For Permit, they do not have to wait for the petitioner to make a proffer; they can place conditions on the permit so if the Council and Commission wanted to say that the restaurant component would not exceed a certain percentage of the total business, this would be an option; and

WHEREAS, there was a discussion regarding the different products the brewery currently offers; and

WHEREAS, Vice Chair Daulton asked if state law limits how much can be served at a tasting; Mrs. Snyder noted that the states does not limit the amount; and

WHEREAS, Mrs. Gentile noted if the Commission has not been to the business or experienced it, then she thinks they ought to use this as an opportunity to do so before they make a decision to come and check it out; she noted that tomorrow is Thursday, and Friday and Saturday are coming; she offered to the Commission to come and live at her house for 24 hours; she would be happy to open up her home; they need to experience the traffic and all the things she will have to deal with every single day; she noted that she wants them to consider this; once again, it is not about the brewery – they love that it is there and happy to see a business flourish in this area; she is trying to preserve her neighborhood, the residents, the children, and the people who who use the greenway; and

WHEREAS, there was further discussion regarding the neighborhood, the tastings and the brewery, etc.; and

WHEREAS, Commission Member Thomasson noted that the activity that is going on that she considers distasteful is out of the control of the Commission; Mrs. Gentile noted that the Commission has the power to make a decision if the zoning becomes something other than what it is now; she noted that she is asking them not to rezone it for something different than what it is; and

WHEREAS, Vice Chair Daulton noted that we are not actually rezoning the property; she noted, if she understands it correctly, currently the business has the right to do tastings and sell their product on the premises; she asked staff to confirm this; Mr. Taliaferro noted this is considered to be accessory to the use of the business; if they want to have it as a significant part of the business, then the "Use Not Provided For" or adding a definition at some point, would be what is necessary; the petitioners are here today since it is a significant part of their business to get the Use Not Provided For permit; and

WHEREAS, it was noted that the business can continue operating as they currently are; Vice Chair Daulton stated that the only difference we are talking about is the square footage or the percentage of the building to be used for food, retail, etc.; Mr. Taliaferro noted that was correct; and

WHEREAS, there was further discussion regarding the number of days of operation, issues with traffic, parking, etc.; and

WHEREAS, Mrs. Hanson noted they already have enough problems with the amount of space they are currently using for tastings, etc.; she thinks as far as some of the events are concerned, a more central location in the city would bring more publicity to the City and the business and be better for them than their current location; she thinks that 10% of the building space is more than ample for what they are doing and where they are located; she understands that we cannot tell them they cannot do this, but all the neighbors are asking that we tell them they cannot do more; and

WHEREAS, Commission Member Thomasson asked if they could consider elements of the request; Mr. Maxwell noted that it is possible, and they can take action to approve less than what is requested; and

WHEREAS, there was further discussion regarding the restaurant portion of the request and the impact of the business if they are allowed to increase the space used for food, retail, etc.; and

WHEREAS, Mrs. Hanson further noted that she feels they can have some really great events at another location in Salem where all of the City would benefit; she further discussed the issues related to the product being served and people being intoxicated; however, they are in a residential neighborhood, and unless the Commission is saying that we do not want this area to be residential any longer, in which case the residents need to know this; and

WHEREAS, Vice Chair Daulton noted that the Commission is a recommending body and the final decision in this matter would be made by City Council; and

WHEREAS, Commission Member Carter asked Mrs. Snyder if she had any other comments regarding what had been discussed and he noted that we are saying with the way the code is written now, it already gives them the right to do what they say they want to do; Mrs. Snyder noted that they do not think they should be restricted in the growth of their business, and they want to sell as much beer as they possibly can but not necessarily on site; she further noted that they are bringing revenue to the City of Salem and this is not an unusual kind of business as microbreweries are popping up everywhere; most states are well ahead of us and have several of these around their cities; further, this is a light industrial area and they are not doing anything they are not supposed to but they do not think they should be limited from having the business grow; basically, they want to be a manufacturing facility where they can sell their product on site; and

WHEREAS, there was a discussion related to possibly screening or putting up some kind of sound barrier; and

WHEREAS, Vice Chair Daulton noted it might be a good idea to have a meeting with the neighbors, and possibly some of their concerns can be alleviated; Mrs. Snyder noted that they would be open to doing that; from the City's perspective, we are excited that business is coming in and bringing in tax revenue, but she certainly understands the neighbor's concerns as well; further, she thinks good neighbors always mean success; Mrs. Snyder noted that her husband, who is the manager on site and could not be here tonight; he has talked to most of the surrounding neighbors and has tried to work to address any concerns so they can be

proactive, if anything is bothering any of them; she further noted that this is the first they have heard of this and she knows he will be happy to talk to anyone; Mrs. Daulton stated maybe they should invite the neighbors over to the brewery and have them do a tasting; and

WHEREAS, Mrs. Hanson noted that she has heard some conflicting information from Mrs. Snyder; she understands about expanding and growing but if they are a manufacturer, then expanding that side of the business is already covered so they would not need this permit for that; they need it to expand and grow the retail part of the business; and

WHEREAS, there was further discussion regarding the proposed Use Not Provided For permit and the retail portion of the business; and

WHEREAS, Commission Member Carter noted that he was pulled in both directions;

A MOTION WAS MADE BY COMMISSION MEMBER CARTER, that the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Briar Oak Investments IV LP, property owner, and Kick The Can LLC, lessee, for the issuance of an "Use Not Provided For" Permit to allow a brewery/restaurant/retail sales business on the properties located at 739 & 751 Kesler Mill Road (Tax Map #34-1-1 and 29-1-2) be approved; and

WHEREAS, there was further discussion related to amending the motion or a substitute motion; and

WHEREAS, Commission Member Thomasson noted that his inclination on the motion made by Commission Member Carter is to add a condition not to exceed 10% of the building size; Commission Member Carter and Mr. Maxwell noted that this is what is currently allowed by the code; Mr. Maxwell noted that if he understood it correctly, what Commission Member Thomasson was really saying was that the motion should be amended to approve only the request for the parking; Commission Member Thomasson noted this was correct; Mr. Taliaferro noted actually the Commission does not approve the request for the parking; the parking is a site plan issue; further, Mr. Taliaferro noted the proposal before the Commission is the "Use Not Provided For" permit to allow the microbrewery/restaurant/retail; and

WHEREAS, it was noted that the motion on the floor was for approval of the request;

WHEREAS, Mr. Maxwell noted if the Commission is thinking if we turn down the request, then it will keep the business as it is currently; Mr. Taliaferro noted that from staff's

perspective it would be nice at some point to have a definition or a use that describes what the petitioners are doing; if the Commission and Council do not want to see it grow, one alternative would be to go ahead and allow the "Use Not Provided For" with some kind of limit which makes them legal conforming; right now they are basically an accessory use; and at least this gives them a definition, and they are operating clearly at that point; from a staff perspective it would be helpful to have an approval with conditions as opposed to a denial to just let them continue as they are now; and

WHEREAS, Commission Member Carter asked if we are talking about the addition of limit on the percentage of restaurant use, and Mr. Taliaferro noted this was correct; and

WHEREAS, there was further discussion related to the definition of the business, the accessory use, and the motion on the table; and

WHEREAS, Commission Member Carter withdrew his motion, and was in the process of another motion; and

WHEREAS, Mr. Taliaferro noted that the petitioners have requested the matter be tabled to another meeting, and he did not know if it was too late; and

WHEREAS, Steven Lemon, representing the landlord, Briar Oak Investments IV, LLC, appeared before the Commission; he noted that the motion had been withdrawn; Briar Oaks Investments is not directly involved in the use of the tenant but they certainly support the activities that they have been doing on the property; they believe that the investment that they have made in Salem is significant; he noted if the Commission or staff has not seen the facility, he invited them to do so; it is primarily a manufacturing facility and the volume is well in access of any amount of beer that one could sell at a restaurant or retail; they are therefore dependent on other restaurants and retail to sell their wares at the volume they have constructed to produce; he further noted that Mrs. Snyder has not had conversation with her partners about the situation; there has been conversations with City staff and they did not anticipate the length and tenor and suggestions brought up tonight; the petitioners would appreciate an opportunity to discuss with the neighbors and staff any conditions that might be brought forward at a future meeting or justifications of why conditions are not necessary; however, the structure of this meeting at this time is not with the full information that they (the petitioners and landlord) would like to have; so they respectfully request the Commission

table the consideration of this motion at this time and bring it forward at the next scheduled meeting of the Commission; and

WHEREAS, Mr. Taliaferro noted that the Commission would need to vote to continue to a specific date; it was noted the next regular meeting would be May 15th;

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the request of Briar Oak Investments IV LP, property owner, and Kick The Can LLC, lessee, for the issuance of an "Use Not Provided For" Permit to allow a brewery/restaurant/retail sales business on the properties located at 739 & 751 Kesler Mill Road (Tax Map #34-1-1 and 29-1-2) is hereby tabled and continued to the May 15, 2013, Planning Commission meeting – the roll call vote: all present - aye.

In re: **Hold a public hearing to consider** amending Chapter 66 - Signs, Article I - In General, Sections 66-1 and 66-6; Article II – Permits Generally, Section 66-37; Article III – Construction; Location, Division 1 – Generally, Section 66-72 and Division 5 – Temporary Signs, Section 66-162; Article IV – Permitted Signs by Use and District, Sections 66-254, 256, 258 & 259 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs; also, consider amending Chapter 66, Article III – Construction; Location, by adding Section 66-77 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider amending Chapter 66 - Signs, Article I - In General, Sections 66-1 and 66-6; Article II – Permits Generally, Section 66-37; Article III – Construction; Location, Division 1 – Generally, Section 66-72 and Division 5 – Temporary Signs, Section 66-162; Article IV – Permitted Signs by Use and District, Sections 66-254, 256, 258 & 259 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs; also, consider amending Chapter 66, Article III – Construction; Location, by adding Section 66-77 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs; and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the March 27 and April 3, 2013, issues of The Roanoke Times; and

WHEREAS, staff noted the following: this request is to amend Chapter 66, Article I, II, III, & IV pertaining to signs; and

WHEREAS, Benjamin Tripp, Planner, appeared before the Commission explaining the proposed ordinance amendments; he noted this is an update to the sign ordinance which mostly came out of discussions with City Council, Planning Commission, and staff during the Comprehensive Plan update process; and

WHEREAS, Vice Chair Daulton noted that in multi-family residential areas there is signage for the apartment complexes; she asked if this is addressed in the proposed changes in that zoning; Mr. Tripp noted that he did not think this was changed in the ordinance, and it would be handled as it always had been; and

WHEREAS, Mrs. Wines noted that it is actually part of the R-B zoning changes as RMF and R-B are listed together in the ordinance which is smaller signage; and

WHEREAS, no other person(s) appeared related to said request;

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that Chapter 66 - Signs, Article I - In General, Sections 66-1 and 66-6; Article II – Permits Generally, Section 66-37; Article III – Construction; Location, Division 1 – Generally, Section 66-72 and Division 5 – Temporary Signs, Section 66-162; Article IV – Permitted Signs by Use and District, Sections 66-254, 256, 258 & 259 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs; also, consider amending Chapter 66, Article III – Construction; Location, by adding Section 66-77 of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to signs be amended as follows:

Chapter 66 - SIGNS

ARTICLE I. - IN GENERAL

Sec. 66-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Electronic sign* means an electrically activated changeable sign whose variable content capability can be electronically programmed or controlled.**

Ground sign means a **type of freestanding** sign which is supported by one or more poles,

uprights or braces or other means in or upon the ground, which are not a part of the building, other than a pole sign or a pylon sign.

Monument sign means a type of freestanding ground sign with the entire bottom of the sign mounted or affixed to a base or pedestal or directly to the ground, in which the sign and support structure are an integral part of one another.

Street clock means any timepiece erected on the exterior of any building or structure and extending more than 18 inches over the street right-of-way and primarily for the convenience of the public, and shall be substantially a clock and not for advertising matter. ~~For purposes of~~

~~this definition, a lighted structure which displays the time as well as messages and animation shall be considered a freestanding sign, wall sign, mansard sign, roof sign or projecting sign and not a street clock.~~

(Code 1969, § 24A-2)

Sec. 66-6. - Application of chapter to certain types.

Subject to the provisions of section 66-4, the provisions and regulations of this chapter shall not apply to the following signs:

~~(1) Home occupation signs, as provided for in this chapter.~~

(1) Real estate signs which advertise the sale, rental or lease of the premises upon which such signs are located only, not exceeding six square feet in area in residential districts and not exceeding 32 square feet in area in business districts and industrial districts.

(2) Signs denoting the architect, engineer or contractor, when placed upon work under construction and not exceeding 32 square feet in area.

(3) Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.

(4) Traffic or other municipal signs, legal notices, railroad crossing signs, danger signs and such temporary, emergency or nonadvertising signs as may be approved by the council.

(Code 1969, § 24A-6)

ARTICLE II. - PERMITS GENERALLY

Sec. 66-37. - Filing and contents of application.

Application for a permit as required in section 66-36 shall be made upon a form provided by the building official and shall contain, or have attached thereto, the following information:

(1) Name, address and telephone number of the applicant.

- (2) **The current business license number or Machinery & Tools tax number from the Commissioner of the Revenue.**
- (3) Location of building, structure or lot to which or upon which the sign in question is to be attached or erected.
- (4) Position of the sign in question in relation to nearby buildings or structures.
- (5) One blueprint or ink drawing of the plans and specifications and method of construction and attachment to the building or in the ground when deemed necessary by the building official.
- (6) Copy of stress sheets and calculations, when deemed necessary by the building official, showing the structure is designed for dead load and wind pressure in any direction in the amount required by this chapter and all other laws and ordinances of the city.
- (7) Name of person erecting the structure.
- (8) Written consent of the owner of the building, structure or land to which or on which the structure is to be erected.
- (9) Insurance policy or bond as required by section 66-39
- (10) Such other information as the building official shall require to show full compliance with this chapter and all other laws and ordinances of the city.

(Code 1969, § 24A-10)

ARTICLE III. - CONSTRUCTION; LOCATION

DIVISION 1. - GENERALLY

Sec. 66-72. - Traffic hazards.

(c) *Prohibited signs.* No ~~business~~ sign shall have flashing, intermittent or animated illumination or lights of changing degrees of intensity, unless each interval in the cycle is **five eight** seconds or more and the sign does not constitute a traffic hazard. Other prohibited ~~business~~ signs include moving and revolving signs and string lights, strip lighting and border tubing outlining structures. This section shall not be construed to prohibit signs which display lighted messages and animation, such as those which display time, temperature and other information, provided all other requirements of this chapter are met.

(Code 1969, § 24A-20)

Sec. 66-77. Electronic Signs Generally.

In order to minimize driver distraction, promote pedestrian and vehicular safety, and to reduce light pollution, the following regulations apply to Electronic Signs generally:

- (a) No more than one Electronic Sign shall be allowed per business.
- (b) All Electronic Signs shall be freestanding.
- (c) All Electronic Signs shall be required to hold a static image for a minimum duration of 8 seconds. Faster rates are prohibited.
- (d) Transition times shall be no more than one (1) second facing the same travelled way.
- (e) All Electronic Signs shall have an automatic light adjustment feature to regulate brightness.
- (f) Any Electronic Sign shall be oriented away from residential properties so as to avoid light spillage.
- (g) Video, flashing, strobe effects, “storybook” advertising, consecutive messages, or similar effects are prohibited.
- (h) Electronic Signs may not be used as off-premises, directional, location, temporary, portable, or general advertising signs.
- (i) Electronic Signs displaying the current time or date shall be kept accurate. If this requirement is not complied with, the sign in question shall be promptly repaired or removed.
- (j) For lots or parcels with less than 75 feet along their principal street frontage, electronic signs shall not exceed 24 square feet. For all other lots or parcels, electronic signs shall not exceed 60 square feet.

(Code 1969, § 24A-24)

Secs. 66-78—66-100. - Reserved.

DIVISION 5. - TEMPORARY SIGNS

Sec. 66-162. - Materials and area.

No temporary sign ~~of combustible material~~ shall exceed ~~four feet in one of its dimensions or 100~~ **twenty-four (24)** square feet in area; ~~provided, however, that such signs in excess of 60 square feet shall be made of rigid materials, that is, of wallboard or other light materials with frames.~~

(Code 1969, § 24A-35)

ARTICLE IV. - PERMITTED SIGNS BY USE AND DISTRICT

Sec. 66-254. - RMF Residential Multi-Family District; RB Residential Business District.

Signs permitted in RMF Residential Multi-Family District and RB Residential Business District shall be as follows:

- (1) Business signs, subject to the following:
- a. Only one ~~such~~ sign per separately identifiable place of business shall be displayed.
 - c. For lots or parcels with two or more separately identifiable places of business, one freestanding business sign up to ~~24~~ **16** square feet may also be erected, provided there are no other freestanding business signs on such lots or parcels. If such businesses are located on more than one street frontage or alley access, additional freestanding business signs may be erected as provided in subsection (1)d. of this section.
 - e. No freestanding sign shall exceed ~~25~~ **10** feet in height.
 - f. Monument sign not exceeding 6 feet in height.**

Sec. 66-256. - TBD Transitional Business District.

Signs permitted in TBD Transitional Business District shall be as follows:

- (1) Business signs only on the premises, subject to the following:
- h. Restaurants may have **up to two** menu boards no more than 24 square feet in area each, provided the total combined business sign surface area for the lot or parcel, including the square footage of the menu boards, does not exceed total square footage permissible under this article, and provided further, such boards are located at least 75 feet from any residential district.
- (3) Portable signs only on the premises, subject to the following:
- a. Such sign shall not exceed ~~32~~ **24** square feet.
 - b. No portable sign shall be an electronic sign.**
 - d. Such sign shall not be displayed for more than 30 consecutive days during a ~~three six~~ month calendar period. A sign permit as provided for by this article shall be required for each portable sign, which specifies the beginning and ending dates of the permitted display period. Only one 30-day permit shall be issued to each separately identifiable place of business or use during each ~~three six~~ month calendar period. For purposes of this section, the 30-day display period shall be based upon such permitted display dates unless the building official receives written notification from the applicant which requests amendment of the permitted display period prior to its commencement, and so approves the applicant's request. Each business or use eligible for a sign permit for a portable sign shall be granted no more than ~~two~~ **four** such permits per calendar year.

Sec. 66-258. - HBD Highway Business District; BCD Business Commerce District; LM Light Manufacturing District; HM Heavy Manufacturing District.

Signs permitted in HBD Highway Business District; BCD Business Commerce District; LM Light Manufacturing District; and HM Heavy Manufacturing District shall be as follows:

(5) Electronic Signs as provided in subsection 66-77.

Sec. 66-259. - Prohibited signs.

The following devices and locations shall be specifically prohibited:

- 1. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.**
- 2. Except as provided for elsewhere in this code, signs encroaching upon or overhanging public right-of-way. No *sign* shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.**
- 3. Signs which blink flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.**
- 4. Portable signs except as provided in subsection 66-256(3).**
- 5. Any *sign* attached to, or placed on a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:**
 - a. The primary purpose of such a vehicle or trailer is not the display of signs.**
 - b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.**
 - c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used in the daily function of the business to which such signs relate.**
- 6. Vehicles and trailers that are used primarily as static displays, advertising a product or service, or utilized as storage, shelter or distribution points for commercial products or services for the general public.**
- 7. Balloons, streamers, inflatables, flags (governmental flags excluded), pinwheels, and like displays, except as provided in subsection 66-161.**
- 8. It shall be unlawful for any person to display upon any sign any obscene, indecent or immoral matter.**
- 9. No general advertising sign shall be located within the corporate limits of the city.**

10. No existing grandfathered general advertising sign shall be converted to an Electronic Sign or billboard.

There being no further business to come before the Commission, the same on motion adjourned at 8:20 p.m.

Executive Secretary

Vice Chair