

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 7, 2014**

<u>CASE NUMBER</u>	5902
<u>APPLICANT NAME</u>	Gavin Bender
<u>LOCATION</u>	166 South Royal Street (Southwest corner of South Royal Street and Theater Street)
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow a brewery in a T-5.1 District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: the Downtown Development District Code requires a minimum of a SD-WH district to allow a brewery.
<u>ZONING</u>	T-5.1 Mixed Use - Medium Intensity District
<u>AREA OF PROPERTY</u>	31,320 square feet / 0.72 \pm Acres
<u>CITY COUNCIL DISTRICT</u>	District 2
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No traffic impacts anticipated by this variance request.
<u>URBAN FORESTRY COMMENTS</u>	No comments.
<u>FIRE COMMENTS</u>	No comments

ANALYSIS The applicant is requesting a Use Variance to allow a brewery in a T-5.1 Mixed Use - Medium Intensity District; the Downtown Development District Code of the Zoning Ordinance requires a requires a minimum of a SD-WH Special District – Warehousing District to allow a brewery. The site is located within the Church Street East Historic District, within the Fort Condé Village.

The applicants are proposing to renovate an existing vacant building to be a brewery with tasting room.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant states:

There currently exists a one story brick building which has been on this site for several decades. It was last used as a restaurant. The Applicant proposes to create a brewery for the production of craft beer. There will be a tasting (or tap) room which will be approximately 1500 sq. ft., which will employ three (3) people. Hours of operation will be Monday through Friday, 5:00 p.m. to 10:00 p.m., Saturday 3:00 p.m. to 10:00 p.m. and Sunday 3:00 p.m. to 9:00 p.m.

Also, all machinery will be located within the existing structure, and will not create any type of noise, odors or pollution. The square footage of the building is 22,000 sq. ft. The property has been vacant for over ten (10) years, and it is obvious that the nature of the building, and its location, keeps it from being used as it is currently zoned.

Until recently, the site had been within an H-B, Historic-Business District, within which a brewery is not allowed: approximately 53 other uses were allowed “by right” within the H-B district.

On May 13, 2014, the City Council approved the adoption of the new Downtown Development District Code, replacing the previous zoning districts, list of approved uses, parking requirements, etc., for properties within the Henry Aaron Loop. Thus, the site is now classified as T-5.1 Mixed Use - Medium Intensity District. Unfortunately, a brewery is not allowed within a T-5.1 district, however, 33 other uses are allowed “by right” within the district.

The applicant states that “*The property has been vacant for over ten (10) years, and it is obvious that the nature of the building, and its location, keeps it from being used as it is currently zoned.*” This should really only apply to the previous H-B district, as the new T-5.1 district has only been in force since May 21st, or just over 6 weeks as of the July 7th Board meeting. Thus, there has been very little time for the property owner to consider uses allowed “by right” at this site under the new land use regulations.

According to the Brewers Association, a not-for-profit trade group dedicated to promoting and protecting America's small and independent craft brewers (*information from <http://www.brewersassociation.org/statistics/market-segments/>*), there are several different tiers of breweries:

1. **Microbrewery:** A brewery that produces less than 15,000 barrels (17,600 hectoliters) of beer per year with 75 percent or more of its beer sold off-site. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carry-outs and/or on-site tap-room or restaurant sales.
2. **Brewpub:** A restaurant-brewery that sells 25 percent or more of its beer on site. The beer is brewed primarily for sale in the restaurant and bar. The beer is often dispensed directly from the brewery's storage tanks. Where allowed by law, brewpubs often sell beer "to go" and /or distribute to off site accounts. Note: BA re-categorizes a company as a microbrewery if its off-site (distributed) beer sales exceed 75 percent.
3. **Regional Craft Brewery:** An independent regional brewery who has either an all malt flagship or has at least 50 percent of it's volume in either all malt beers or in beers which use adjuncts to enhance rather than lighten flavor.
4. **Regional Brewery:** A brewery with an annual beer production of between 15,000 and 6,000,000 barrels.
5. **Large Brewery:** A brewery with an annual beer production over 6,000,000 barrels.

No information was provided with the application at hand to convey the scale of the proposed brewery in terms of production, nor the seating capacity of the proposed tasting/tap room. Also, no information has been provided regarding how the brewery products will be conveyed off-site: will the products be canned, bottled or placed in kegs?

No site improvements are depicted on the submitted site plan. Thus there is no indication of any off-street loading or parking areas that are intended or proposed.

The applicant also states that the brewery use "*will not create any type of noise, odors or pollution.*": research by staff shows that breweries do in fact emit odors and pollution. The offensiveness of odors relating to a brewery are, apparently, subjective, and it is not known if any smells emanating from the proposed brewery will be deemed offensive by adjacent businesses, including the abutting Fort Conde Inn, a boutique hotel.

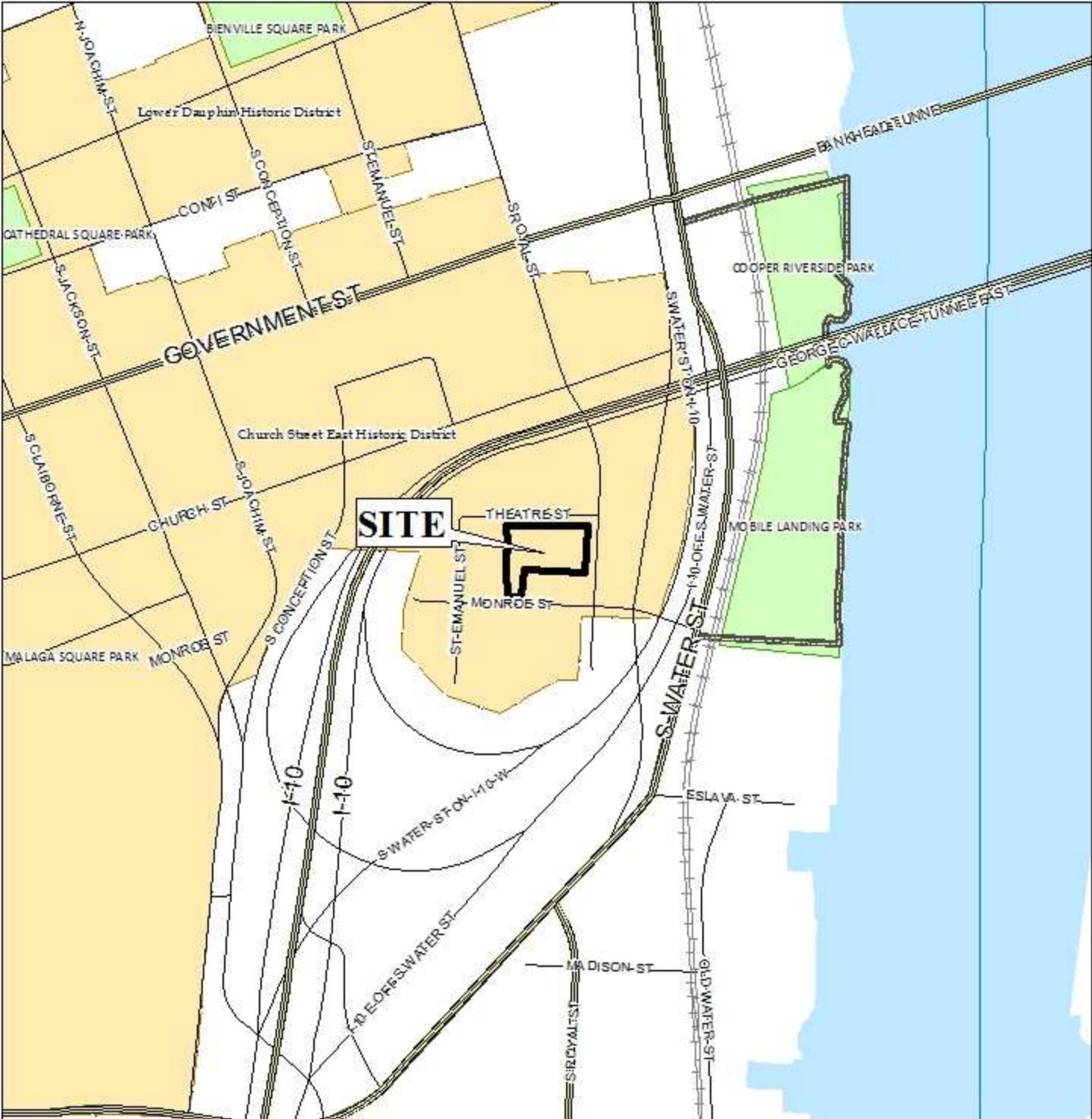
Finally, the application at hand is only for a use variance. There is no indication in any of the information submitted that there will be any improvements to the building or the site which may require additional variances from the new Downtown Development District Code requirements. Had a predevelopment meeting, required by Section 64-3.I.4.b)3), occurred prior to this use variance application, City staff would have perhaps identified other variances required for the

proposed use due to site of building modifications. Thus, even if the use variance is approved, additional variances may be determined necessary once the required predevelopment meeting has occurred, and once any approvals by the Architectural Review Board have been granted (if they deviate from Downtown Development District Code requirements).

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance will be contrary to the public interest due to the fact that it will deviate from the recently adopted Downtown Development District Code and Regulating Plan, which provides other property use opportunities which may not have been available for this site under the previous H-B, Historic-Business District regulations which were applicable to the site;
- 2) Special conditions do not exist with this site such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship, as there are over 22 blocks within the Downtown Development District that are appropriately zoned SD-WH Special District – Warehousing District to allow a brewery; and
- 3) That the spirit of the chapter shall not be observed and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the variance due to the fact that the proposed use would be out of character with the districts identified in the Regulating Plan created by the recently adopted Downtown Development District Code, and the proposed use may be incompatible with existing adjacent uses.

LOCATOR MAP



APPLICATION NUMBER 5902 DATE July 7, 2014

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REQUEST _____ Use Variance _____



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units. A museum lies north of the site.

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REQUEST Use Variance

R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

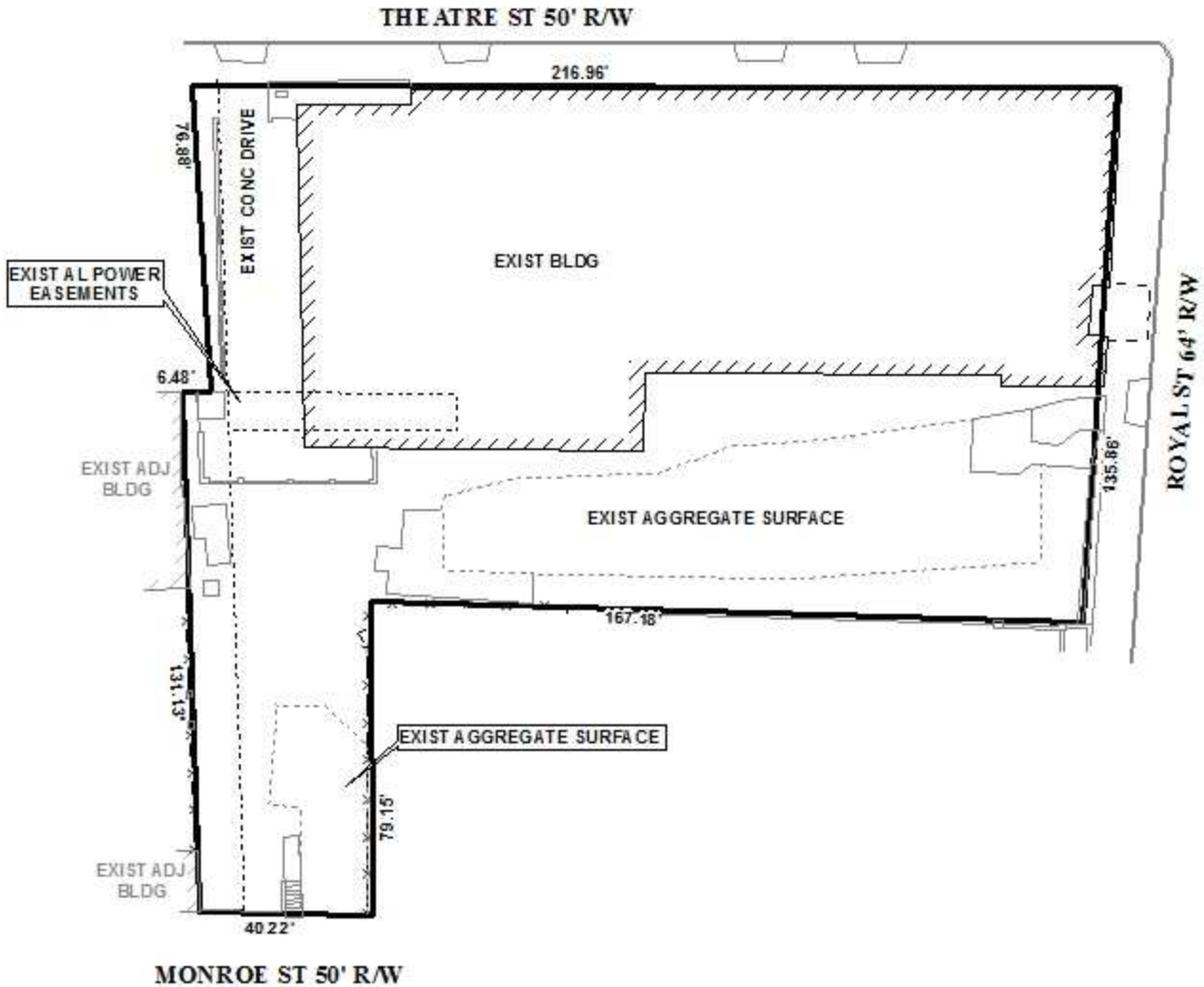


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SITE PLAN



The site plan illustrates the existing improvements.

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