



# DEXTER TOWNSHIP

## ZONING BOARD OF APPEALS

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RECORDING SECRETARY

### REGULAR MEETING MINUTES OF THE ZONING BOARD OF APPEALS

#### Thursday November 9, 2017

Members present: Chairperson Brook Smith, Vice-Chairperson Beth Filip, Secretary Jay Holland, James Drolett, Don Darnell.

Absent: With notice, Bill Gajewki.

Also present: Zach Michels, Director of Planning and Zoning (DPZ), Janis Miller, Recording Secretary, and members of the public.

- I. Call to Order:** The meeting was called to order by Chairperson Smith at 6:00 p.m.
- II. Pledge of Allegiance:** Chairperson Smith led the Pledge of Allegiance to the Flag.
- III. Approval of Agenda:**  
With no objections, Chairperson Smith deemed the agenda approved.
- IV. Public Comment- Non Agenda Items:** None
- V. Action Items:**  
*Chairperson Smith recused himself from the meeting citing conflict of interest due to his friendship with Mr. Ehman. Vice-Chairperson Filip conducted the meeting. DPZ Michels also noted that Mr. Gajewski would not be seated as he had a conflict of interest due to his vote, as a Planning Commission member, regarding the item being disputed tonight.*

#### 1. Introduction of the case:

<b>Action Item:</b> # 1
<b>Appeal Number:</b> (17-ZBA-836) Ehman
<b>Applicant Name(s):</b> Thomas Ehman
<b>Property Tax ID:</b>
<b>Address:</b>
<b>Petition Description:</b> <i>Appeal of Director of Planning &amp; Zoning's decision that the making of alcoholic beverages, as part of a commercial retail/serving business, is permitted in the General Commercial (C-1) District.</i>

**2. Report from the Director of Planning & Zoning:**

DPZ Michels summarized the staff report, dated November 9, 2017, noting that the applicant disagrees with the decision regarding (17-PC-180/181) Ore Creek, that the production of an alcoholic beverage, as part of a commercial facility that also sells and serves that product, is permitted in the General Commercial (C-1) District. In order to determine if the applicant has standing to make an appeal to the Zoning Board of Appeals, the appeal must be made by an *aggrieved person and in a timely manner*. Citing the Zoning Enabling Act MCL 126.3604(1) and MCL 125.3504(1), 2009 Ordinance 34-14, the Dexter Township Zoning Ordinances §4.20(B) & §4.35(A)&(B), and the case Joseph v Grand Blanc; the DPZ argues that the applicant is not an aggrieved person nor was the appeal filed in a timely manner. Upon ZBA review of the staff report containing Mr. Ehman's Appeal of Decision Application form, 2009 DPZ Sloan's memorandum re: Ugly Dog Distillery, Resolution (09-267), the Zoning Permit for Ugly Dog Distillery, and the Resolution for a Preliminary Site Plan Approval (17-PC-181) Ore Creek; the Zoning Board of Appeals must determine if 1) the original decision or action was arbitrary or capricious; 2) the original decision or action was based on an erroneous finding of material fact; 3) the original decision or action constituted an abuse of discretion; or 4) the original decision or action was based on an erroneous interpretation of this Ordinance or zoning law.

**3. Zoning Board of Appeals Q & A with the Director of Planning & Zoning:**

**Filip:** Is the DPZ the only person in the township office that can determine what a "use" is? Is the Planning Commission not able to determine from an application what a "use" is? Has there been an appeal made to the Planning Commission to change the zoning ordinance, between approval of Ugly Dog Distillery and approval of Ore Creek, or anything proposed to the Board of Trustees to alter the ordinance?

**DPZ Michels:** There is no record of any action by the Planning Commission, staff, or Township Board to change the Zoning Ordinance following the 2009 decision. It would have been clearer if that had been the case and that speaks to why there has to be a timely appeal. Currently there is only one member of the Township Board that was present in 2009. There is only one Township staff member that was here at that time. There has been no action in the current Zoning Ordinance although the draft of the new Zoning Ordinance does explicitly address wineries. To the question of process, the Zoning Ordinance puts that on the Zoning Administrator. The Planning Commission can make an appeal to the Zoning Board of Appeals if they think the Zoning Administrator's interpretation or decision is questionable. The current Planning Commission did not take any action regarding an appeal, and they approved both the Resolutions for Special Land Use and a Preliminary Site Plan. Any individual member of the Planning Commission can vote no on a Resolution.

**Holland:** From the submitted documentation, in 2014 the Board of Trustees recommended Ore Creek receive a small winery license?

**DPZ Michels:** Correct.

**Drolett:** You mentioned that the Planning Commission could appeal the decision of the Zoning Administrator, that's what's happening. How does the Planning Commission, as a body, become aggrieved?

**DPZ Michels:** To file an appeal you have to be a person aggrieved or an official of one of the bodies.

**Drolett:** Isn't the Vice-Chair of the Planning Commission an official of the body?

**DPZ Michels:** He is, but he is not acting with sanction of the Planning Commission; the Planning Commission has never endorsed this appeal.

**Drolett:** If we're saying you have to be an aggrieved party, then the whole Planning Commission would have to say they were aggrieved. How would they prove they were aggrieved, other than the fact that they disagreed with the interpretation?

**DPZ Michels:** He's not acting as a member of the Planning Commission. The appeal was filed in the middle of a Planning Commission meeting.

**Drolett:** I didn't hear you say the whole board (PC) did it. I heard (quote from the Zoning Enabling Act) an officer of a body.

**Darnell:** Zach, what's procedurally the way to deal with the issue? Can Mr. Ehman offer proof?

**DPZ Michels:** That is what we asked for, in correspondence with the applicant, to complete the application.

**Darnell:** What if the Board decides he's not an aggrieved person, or the appeal is not timely, or it's premature? Do we vote on one of those and just dismiss it?

**DPZ Michels:** What would happen in court?

**Darnell:** There would be a motion.

**DPZ Michels:** As the person who reviews the applications, the Director of Planning and Zoning could have said there was not standing and not put it on the agenda, then that decision could have been appealed to this body. But it is an appeal of decision, so we tread lightly and didn't take that action.

**Holland:** Was the subject of appeal brought to the Planning Commission?

**DPZ Michels:** With the Planning Commission taking an official position?

**Holland:** Yes.

**DPZ Michels:** Not directly. However, the Planning Commission did vote to keep it on the agenda, and they approved the Special Land Use for sampling and approved the Preliminary Site Plan for the hard cider facility.

**Darnell:** The Planning Commission has not issued a resolution to issue an appeal?

**DPZ Michels:** Correct.

**Darnell:** And it (PC) has not issued a resolution to allow Mr. Ehman to issue an appeal?

**DPZ Michels:** Correct.

**Filip:** I'd like to get past the issue of standing before we get to the issues of merit because if we get past the issue of standing we may have more questions for the DPZ and Mr. Ehman with regard to merit.

**Moved by Darnell, in the interest of due process, seconded by Holland, to allow Mr. Ehman to make an offer of proof of the two issues (standing & timeliness), not the body of the appeal, and take a vote to see if he has satisfied those two prongs. Motion carried 3-1.**

**Mr. Ehman:** I didn't come to defend the messenger, I thought I was going to just deal with the message I wanted to make. I didn't think I was going to have to deal with the ancient history of the Township. So, I'm just going to address what's before you tonight, my appeal on an interpretation by the Director of Planning and Zoning.

**Filip:** I would like to begin our questioning of you with regard to the issue of standing, how can you present yourself. The basis of what facts are you presenting yourself before the board tonight?

**Mr. Ehman:** Are we dealing about my qualification to appeal?

**Filip:** Yes.

**Mr. Ehman:** Because the Zoning Ordinance does not define the word aggrieved, the Ordinance says when it's not defined then you use the standard usage of what aggrieved means. I think it's the first time it has been asked of anybody, but there is something else going on behind the scenes that you don't know about, I guess. Merriam Webster definition of the word "aggrieved" is somebody who is troubled, or distressed in spirit; suffering from an infringement of a denial of a legal right; or expressing injury or offence in an aggrieved plea. I'm hurt by what I think this interpretation can do in the future to make the Zoning Ordinance an adventurism thing, where somebody can go in and decide if it's not in the ordinance, to go around it by calling it an accessory use. The sole purpose of my appeal is to protect the interest of the Township. I have no financial interest nor am I contiguous to the property.

**Filip:** You are coming before us as a person aggrieved, not in an official capacity of the Planning Commission. Is that right?

**Mr. Ehman:** I was not authorized by the Planning Commission to do this.

**Filip:** Your basis, for being a person aggrieved, is not based on case law but based on our Ordinance. What portion of the Ordinance says that?

**Mr. Ehman:** In the State Planning Act[sic] it states how to appeal. That's what I'm doing.

**Filip:** The DPZ has brought to us case law that indicates that a person aggrieved is a term of art that's utilized in ordinances.

**Mr. Ehman:** I'm not wrapped up in case law. The Zoning Ordinance is a living document, the Master Plan is a living document, so is the law a living document. All I'm trying to do is get an interpretation on how the word "accessory use" is going to be implemented in Dexter Township.

**Filip:** On the issue of timeliness.

**Mr. Ehman:** I knew nothing about what happened back in 2009. I'm not appealing what was done there.

**Filip:** When you filed your appeal, you did it at the meeting where this was brought up on the minutes?

**Mr. Ehman:** Yes. Not the first time it was brought up. It was brought up in May 2017.

**Filip:** And you raised an objection at that time?

**Mr. Ehman:** Twice at the meeting.

**Darnell:** Are you here tonight as a private citizen, or are you here tonight as a member of the Planning Commission?

**Mr. Ehman:** Both. I don't represent the Planning Commission, but I'm a member of it and I'm interested what we're going to do once this gets decided.

**Filip:** Can it be said that you are any other official for the Township?

**Mr. Ehman:** I'm Director of the Sewer Authority, which has nothing to do with this.

**6:33 PM: Open Public Comment as to whether this has been properly brought up as a person aggrieved or with timeliness.**

**Filip:** Does anyone in the audience have anything to add to the discussion?

**6:34 PM Close Public Comment on this particular aspect.**

**DPZ Michels:** A point of clarification: The applicant knew, or should have known, about the 2009 decision, as it was included in the draft resolution and sent to the Planning Commission

as part of Ore Creek. So that information was available 7 to 10 days before the application was filed. It's referenced in the applicant's clarification materials.

**Drolett:** The issue that happened in 2009, as far as I'm concerned is mute. It happened long before Mr. Ehman was on the Planning Commission and back involved in Township Government. There is a lot of case law that says if a governmental body makes a mistake, they don't have to live with that mistake, they can correct it. I think he has a perfect right to appeal. He's a member of the community, he's a member of the Planning Commission, he's a Vice-Chair of the Planning Commission, and he says he's aggrieved and upset.

**Darnell:** What's he appealing from? 2009?

**Drolett:** I don't know other than what I've read. Mr. Ehman ought to explain. What is the decision, that the Zoning Administrator made, you feel was the wrong decision and you are appealing?

**Mr. Ehman:** He made several, but the one at the end was lynchpin to this thing. He made a determination that the production of alcohol beverages was an accessory use to a tasting room.

**Filip:** When was that decision made? On what date was that decision made?

**Mr. Ehman:** August 25<sup>th</sup>, the day I appealed.

**Filip:** The meeting was on August 25<sup>th</sup>, when was the staff report issued?

**Mr. Ehman:** It started out with him (DPZ) claiming that retail sales included the production and consumption of alcoholic beverages. The Township has never believed that retail sales included a production of alcoholic beverages.

**Filip:** Zach, when was the date of your decision?

**DPZ Michels:** To clarify, the decision I made in the staff report of August 14, 2017, was that proposed hard cider facility was substantially similar to the Ugly Dog Distillery.

**Filip:** And how many days do you have from a decision to make an appeal?

**DPZ Michels:** You have thirty.

**Darnell:** It sounds like he's not appealing from that. Do I understand correctly that the only thing you are appealing is the manufacturing of alcohol is not an accessory to a tasting room?

**Mr. Ehman:** At the May meeting, all that was being discussed was whether the site plan information was proper so it could come before the Planning Commission. It's a ponderous step that we currently have in the Zoning Ordinance. In the June meeting, all that was on the agenda was for this to be a tasting room. It was in the August meeting that it was on the agenda that I objected to, and it was defended because it was an accessory use.

**Holland:** So the tasting room is the primary use and the production is the accessory use?

**Mr. Ehman:** That is the interpretation of Mr. Michels, and that is what I am challenging.

**Holland:** The tasting room was approved, and they came back for manufacturing?

**DPZ Michels:** To clarify: When you have a Special Land Use request, that application is reviewed for completeness. It was the first time it was going to be reviewed by anybody, so the original meeting in May, when it came into the Planning Commission, it was a review of completeness. The Planning Commission set a Public Hearing date in June, because they felt the application was complete. That date was pushed back to August because the applicant (Ore Creek) was working on addressing some concerns.

**Holland:** If talking about the person aggrieved, reference the fourth paragraph, page 1-3 of the staff report.

**Filip:** That is a concern.

**Darnell:** If you have a conflict of interest, how can a Board member file an appeal at all?

**DPZ Michels:** The applicant himself did not state that he had special standing with this case such that it would require him to remove himself from deliberations.

**Filip:** So, therefore, he would not be a person aggrieved.

**DPZ Michels:** That is the argument that staff is making.

**Filip:** So the Planning Commission could make the appeal itself as the official body, but an individual from the Planning Commission, who is not representing the Planning Commission, cannot be a person aggrieved unless they don't have a conflict of interest. So we have to find that conflict of interest, and he qualifies as a person aggrieved.

**Drolett:** We're not here to discuss that. We're here to discuss whether or not he has standing to appeal this. He's saying he's aggrieved because he's upset over the fact the Zoning Administrator made a determination that because it was a similar thing, that occurred back in 2009, they'd let him do it this time. In fact, if you read the ordinance, if it's not mentioned it's not allowed. It's not mentioned in the Ordinance, in a Commercial District.

**DPZ Michels:** Ordinance §9.05 does say that if you look for similar characteristics, you classify it that way.

**Filip:** Is Mr. Ehman an abutting property owner in this situation? Is he a person who has suffered substantial damage, which is not common to other property owners similarly situated? Has Mr. Ehman alleged special damage in this situation? I'm not aware of any facts along those lines. Is he here as any other official? Is he here as a member of the Planning Commission, or with authorization of the Planning Commission? The DPZ has stated that this is a case where "person aggrieved" is a term of art, and that term of art says that if you're not an abutting property owner, you need to demonstrate a substantial damage. I don't know what basis Mr. Ehman has to appeal this decision.

**Drolett:** We have to be careful that we don't outlaw everyone in the Township from making an appeal.

**Filip:** I agree. Are there not procedural processes for people to go before the Township Board or make an appeal to the Planning Commission, provided in our Ordinances to take care of these situations?

**DPZ Michels:** There are several ways Ordinances can be amended. The Planning Commission can initiate it, the Township Board can initiate, or any property owner within the Township can apply for a text amendment. There are processes for both the Planning Commission to take action, and for individuals within the Township to take action.

**Drolett:** Why didn't the applicant do that? Because he was told he didn't have to?

**DPZ Michels:** It was difficult for me to communicate with the applicant, Mr. Ehman.

**Drolett:** I'm talking about the applicant for Ore Creek. If this wasn't mentioned in the Zoning Ordinance as a permitted use, why didn't somebody, even you, ask the Planning Commission to amend the Ordinance to allow wineries in this district?

**DPZ Michels:** I did not recommend that to the Ore Creek applicants because in my opinion it was a settled question in 2009. There is case law that if actions have been taken upon which significant investment has been made, there is a bar to a estoppel. We need to treat significantly similarly situated applicants the same as that Ugly Dog and Ore Creek are both in C-1, they are both producing small amounts of alcohol on site, which they are selling retail on site, and for off-site distribution. There would very likely be a bar to our not allowing them to do that, because significant time has passed, but not necessarily because of that, but because they took action based on approvals from the Township Board.

**Drolett:** Nobody's talking about appealing that one. If you have a Zoning Ordinance and somebody comes in and wants a use that isn't in the Ordinance, and the manufacturing of

anything is not in the ordinance for the C-1 District. It's not there, it could have been added. I think Patrick Sloan made a huge mistake back in 2009, because it wasn't there either.

**Filip:** We need to get back to the standing as a person aggrieved.

**Darnell:** Standing is a big deal. For what we're talking about here, for Mr. Ehman to have standing, based on what I've read and seen, it offends everything I know about the law.

*Moved by Darnell, seconded by Filip, that the Board dismiss the appeal due to lack of standing. **Motion failed (2-2).***

#### 4. Applicant presentation and Q&A with the Zoning Board of Appeals:

**Mr. Ehman:**

1. May 23<sup>rd</sup> I noticed QC3 Holdings was applying for a Special Land Use (SLU) "for a facility for the production, sale, and consumption of alcoholic beverages (hard cider)". My call to DPZ Michels was not returned.
2. May 23<sup>rd</sup> Planning Commission meeting opened with a discussion of the agenda and I pointed out that the Special Land Use request should not be on the agenda because the production of alcoholic beverages was not permitted in Special Land Use.
3. June 27<sup>th</sup> Planning Commission meeting I objected twice to the agenda item for which the DPZ assured the PC that retail sales included production of alcoholic beverages. The May 23<sup>rd</sup> minutes revealed that the discussion was for a tasting room only.
4. August 22<sup>nd</sup> reviewing delivery of the agenda prompted me to immediately procure an Application of Decision Application Form.
5. August 25<sup>th</sup> Planning Commission meeting I again objected for which the DPZ stated his interpretation of alcoholic production was, an accessory use. I filed my Appeal of Decision, with DPZ Michels, at the time of the agenda review.
6. The August 25<sup>th</sup> Planning Commission meeting continued with only the tasting room on the agenda.
7. The fact is: A tasting room or retail sales cannot exist without the production of the product. This production is hardly incidental and subordinate to a tasting room, the controlling standard of the Accessory Use definition.
8. If the ZBA allows either the PC or DPZ to be casual or oblivious to the meaning of incidental and subordinate, it will open the floodgates to all sorts of adventurism to skirt the text and intent of the Zoning Ordinance.

**Filip:** How is this different from Ugly Dog?

**Mr. Ehman:** I don't care.

**Darnell:** The Ugly Dog both produced alcohol and had a tasting room?

**Mr. Ehman:** I have no knowledge of what they do.

**DPZ Michels:** They sell vodka on site, and they manufacture vodka on site. The process for them to have a tasting room was outlined in 2009 by DPZ Sloan, which is similar to the process applied to the Ore Creek facility, but they did not go through with the sampling.

**Darnell:** So you take issue with them adding a tasting room?

**Mr. Ehman:** No, not at all.

**Filip:** He takes issue with adding the production facility for the tasting room.

**Mr. Ehman:** I'm challenging the fact that they're going to produce there, because the Ordinance doesn't permit that. The way it got shoehorned in was to call it an accessory use so it didn't have to be in the permitted use column of the Special Land Use Ordinance.

**DPZ Michels:** This is why timing this and filing an appeal decision is very important, as the decision (Ugly Dog) was made in 2009 by DPZ Sloan. He's not here to ask questions of. His determination is, page 1-19 of the staff report, that retail sales and production of vodka was a permitted use of the property. If they wanted to do sampling, that would require Special Land Use for serving of alcohol.

**Mr. Ehman:** Whatever the findings of the Director of Planning and Zoning, in those days, may be a reference for the present one but it certainly isn't a reference for the Board or Planning Commission to follow.

**Filip:** How is it that the DPZ's decision was arbitrary and capricious when he considered the present proposed use?

**Mr. Ehman:** I'm not privy to any of that history so I can't answer your question.

**Filip:** There was an answer in our report, in the application, correct?

**Mr. Ehman:** Mr. Michels made reference to the fact that he was basing his decision on the fact they let the Ugly Dog do it.

**5. Open Public Hearing on agenda item: 7:05 p.m.**

Jay Denton and Brandon Bond, OC3 Holdings, owners of Ore Creek, 9280 McGregor The State of Michigan required approval from the Township to create a winery, to receive a small winery license. That was granted and triggered this process. There was an original decision made by the Board which allowed us to move forward. We've made a significant investment in the community. There is an existing business doing exactly what we want to do. We have done everything the Township has asked. We do understand that the new (draft) Ordinance has a winery as an approved use.

**Filip:** How are you different from the Ugly Dog Distillery?

**Denton:** Process.

**Drolett:** What goes into making hard cider?

**Denton:** Bringing juice into the facility, adding yeast and letting Mother Nature take her course. There is no heating or brewing.

**Filip:** Is there a by-product from the production?

**Denton:** Minimal.

**Holland:** Is most of the product going to be sold out of the facility or will it be shipped?

**Denton:** We don't have plans at this time for distribution.

**Holland:** What's your capacity per batch and how long does a batch take?

**Denton:** A batch takes about six months to ferment. Production will be about 1,000-2,000 gallons a year.

**Drolett:** What we're really talking about is not manufacturing but an aging facility.

**Denton:** It's just an aging process.

**Drolett:** It's being produced off-site (juice), it's just being fermented on site.

**Denton:** Correct.

**Drolett:** It's manufacturing, but I think it should have been handled a different way.

**Bond:** We are actually classified (NCIS Classification) as a food processor. Whether it's a grape or an apple we operate under the same requirements of the Health Department.

**Drolett:** Processing isn't in the Ordinance either. This really should have been taken before the Township Board and Planning Commission to add an amendment.

**6. Close Public Hearing on agenda item: 7:14 p.m.**



**7. Zoning Board of Appeals deliberations and Standards of Review:**

**Filip:** I want to remind the Board that our deliberations are going to be on the questions of: was 1) the original decision or action was arbitrary or capricious; 2) the original decision or action was based on an erroneous finding of material fact; 3) the original decision or action constituted an abuse of discretion; or 4) the original decision or action was based on an erroneous interpretation of this Ordinance or zoning law.

**DPZ Michels:** A reminder that the decision current staff made was that the Ore Creek hard cider facility was substantially similar to Ugly Dog.

**Darnell:** Brandon, you are familiar with this classification, what would be the classification be for someone producing vodka (Ugly Dog)?

**Bond:** They are a distillery. They come under a lot more stringent requirements in regards to classification through the State and Health Department. Their process is a lot different.

**Darnell:** What I'm wondering is if they are also a food processor.

**Bond:** I don't know.

**Filip:** The by-products of manufacturing are different as well?

**Bond:** Correct.

**Drolett:** The issue here is the Zoning Administrator classified this as an accessory use to the tasting room. And Mr. Ehman is saying you can't have a tasting room unless you produce the stuff first. Which is the chicken and which is the egg here?

**Holland:** Interesting the Board did approve a new small wine maker license for Ore Creek Craft Cider LLC.

**Drolett:** You have to read the rest of the Resolution. It says providing it complies with all the Zoning Ordinances.

**Holland:** So the question I have is: What is the Township Board really supporting? Where in the Township is the manufacturing of, fermenting of, hard cider permitted. What zoning district?

**DPZ Michels:** The role of Zoning Administrator and Director of Planning and Zoning is an interesting combination of executive and judicial. There are merits to both those powers. When decisions are made in a judicial manner, it's precedential for future staff. Even though I did not like the process that was done in 2009, there was substantial record that the Township Board agreed with that determination. I was comfortable going forward not requiring an amendment, because there was a record, and the Township Board approved for Ugly Dog a distillery. Based on the case law established by the Township, it would be permitted in C-1 Districts, only as part of a retail sales operation. The record established by DPZ Sloan in 2009 was production and retail sales. The interpretation standing out there would not allow you to just manufacture the product and ship it out.

**Holland:** So production would be allowed as a part of retail sales?

**DPZ Michels:** Correct, in all C-1 Districts.

**Drolett:** There is no case law. It was a previous Zoning Administrators interpretation, that's not case law.

**DPZ Michels:** It is case law for the operation of the department. If they make a decision, and there's no legislative action taken by the Township Board to change (the decision), or by the Zoning Board of Appeals to change that (the decision), then it provides guidance for us.

**Drolett:** That's exactly what Mr. Ehman is doing. What you suggested somebody could do.

**Filip:** So Zach, it is my understanding that our own decisions are not precedential.

**DPZ Michels:** For variances. For interpretation it is.

**DPZ Michels:** If there is a need to codify it, or correct it, there is a legislative process to make the correction.

**Filip:** So this is why we are concerned with equal protection, because there was already once a decision made.

**DPZ Michels:** Correct.

**Drolett:** That is why it was added to the new Ordinance, because it wasn't in the old one. His interpretation is that it is an accessory use to the retail sales.

**Filip:** Is this factually any different, in that regard?

**Drolett:** Yes, because the Ugly Dog came in just to manufacture. The tasting was added afterwards.

**DPZ Michels:** They came in as part of the same package. They have not added a tasting room, but the process laid out by DPZ Sloan in October 2009 was, you can manufacture and sell it there. If you want to do sampling, you need to get a Special Land Use for that. Ugly Dog never did that, but in our record it is the same process that I told to the Ore Creek applicants.

**Darnell:** And they did it?

**DPZ Michels:** Correct. They received Special Land Use approval from the Planning Commission.

**Darnell:** Special Land Use runs with the land?

**DPZ Michels:** Correct.

**Standards of Review:**

<b>(1) Arbitrary or Capricious 4.35(E)(1)</b>	
<b>Does the requested appeal of decision meet the following standard:</b>	
<b><i>The original decision was arbitrary or capricious.</i></b>	
<u>DPZ Comment:</u> <i>The applicant states "Yes- probably to cover the DPZ's error in telling applicant's [sic] the use was permitted." DPZ Michels will not address the decision made in 2009 but argues that the decision that the proposed hard cider facility is substantially similar to the previously-approved distillery facility was not arbitrary or capricious. Rather, it was based on an extensive review of the record established during review and approval of Ugly Dog Distillery.</i>	<u>YES</u> None  <u>NO</u> Drolett Holland Filip Darnell
Notes: Darnell: It wasn't arbitrary or capricious because it only follows good reason that the manufacture of alcohol allowed use of a tasting room.	

<b>(2) Erroneous Findings of Fact 4.35(E)(2)</b>	
<b>Does the requested appeal of decision meet the following standard:</b>	
<b><i>The original decision or action was based on an erroneous finding of material fact.</i></b>	
<u>DPZ Comment:</u> <i>The applicant has not argued that the decision or action being appealed was based on an erroneous finding of material fact. DPZ Michels will not address the decision made in 2009 but agrees that the decision that the proposed hard cider facility is substantially to the previously-approved distillery facility was not based on an erroneous finding of material fact. The record for both the previous review and the proposed use were extensive and adequate to generate an informed decision.</i>	<u>YES</u> Drolett  <u>NO</u> Holland Filip Darnell
Notes: Darnell: I didn't hear any evidence, even from Mr. Ehman, that there was any error in fact on behalf of the DPZ.	

<b>(3) Abuse of Discretion 4.35(E)(3)</b>	
<b>Does the requested appeal of decision meet the following standard:</b>	
<b>The original decision or action constituted an abuse of discretion.</b>	
DPZ Comment: <i>The applicant states “obviously.” DPZ Michels will not address the decision made in 2009 but argues that the decision that the proposed hard cider facility is substantially similar to the previously-approved distillery facility does not constitute an abuse of discretion. The Zoning Ordinance specifically charges the Director of Planning and Zoning with determining if uses that are not listed, such as a hard cider facility, is similar with listed uses or previous interpretations.</i>	<u>YES</u> None  <u>NO</u> Drolett Holland Filip Darnell
Notes: Darnell: The decision, as I understand it, was a decision to make the determination that the production of alcohol is an accessory use of tasting. I don't find the exercise of that discretion was abuse.	

<b>(4) Erroneous Interpretation 4.35(E)(4)</b>	
<b>Does the requested appeal of decision meet the following standard:</b>	
<b>The original decision or action was based on an erroneous interpretation of this Ordinance or Zoning Law.</b>	
DPZ Comment: <i>The applicant has not argued that the decision or action being appealed was based on an erroneous interpretation of the Zoning Ordinance or zoning law. DPZ Michels will not address the decision made in 2009 but agrees that the decision that the proposed hard cider facility is substantially similar to the previously-approved distillery was not based on an erroneous interpretation of the Zoning Ordinance or Zoning Law. The Zoning Ordinance and other applicable laws were consulted and applied in the decision-making process.</i>	<u>YES</u> Drolett  <u>NO</u> Holland Filip Darnell
Notes:	

*The questions and comments above are pursuant to Section 4.35(E) of the Dexter Township Zoning Ordinance. This checklist is prepared by staff and is intended as a preliminary guide only; its completion prior to a public meeting should not be considered as an indication of how the Zoning Board of Appeals or its members will vote, as new information may be discovered at the public meeting.*

**8. Motions by the Zoning Board of Appeals:**

*Moved by Darnell, seconded by Holland, that the Zoning Board of Appeals affirm the DPZ's 2017 decision, that the manufacture or production of alcohol is an accessory use of a tasting room.*

**Roll Call Vote: Yeas - Holland, Filip, Darnell: Nays - Drolett: Abstain - none: Absent – Gajewski. Motion carried 3-1.**

**VI. Public Comment:**

Tom Lewis, 8751 Beechwood Drive,

The fact that the brewing/distilling are already in the draft Zoning Ordinance, does that not satisfy your concerns relative to the future? The Township Board has done an initial review of that as the Planning Commission has passed it on.

**Filip:** The new Zoning Ordinance has not been passed, and it may be changed. It does not have the effect of law at this point.

**VII. Approval of Meeting Minutes:**

*Moved by Holland, seconded by Filip, to approve the amended minutes of the September 5, 2017 Regular Meeting. Motion carried by voice vote.*

**VIII. Concerns of Board Members, Director of Planning and Zoning, Recording Secretary:**

**Filip:** People have a reasonable expectation of how property is used in a particular way. When government hasn't done anything in an eight-year time period, I have a concern. I take that seriously, there is some degree of notice. When people look around, they have an expectation. I personally implore the Board of Trustees, and the Planning Commission, to consider that as we are moving forward.

**Drolett:** I have a concern with the whole thing. I don't know how it happened but we have a business that might not be compatible, but the Planning Commission also approved a party place out in back right under a guy's bedroom window. **DPZ Michels:** It hasn't been approved yet.

**DPZ Michels:** The cameras did not hook up with the web cam, so we have been broadcasting from the laptop webcam. There is nothing on the agenda for December.

**IX. Adjournment:**

Vice-Chairperson Filip declared the meeting adjourned at 8:00 p.m.

Respectfully submitted,

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Jay Holland, Secretary

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Janis Miller, Recording Secretary