

**Charter Township of Elmwood
Planning Commission Regular Meeting
Elmwood Township Hall (10090 E. Lincoln Rd)
April 16, 2024 at 6:30 PM**

A. Call to Order: Chairman Bechtold called the meeting to order at 6:30 PM.

B. Pledge of Allegiance: The Chair led the Pledge of Allegiance.

C. Roll Call: Present: Chris Mikowski, Doug Roberts, Kendra Luta, Rick Bechtold, Jeff Aprill, Jonah Kuzma, Nate McDonald

D. Limited Public Comment: None

E. Agenda Modifications/Approval: *MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER ROBERTS TO APPROVE THE AGENDA AS PRINTED. MOTION PASSED 7-0.*

F. Minutes- March 19, 2024: *MOTION BY COMMISSIONER KUZMA, SECONDED BY COMMISSIONER MIKOWSKI TO APPROVE THE MINUTES OF MARCH 19, 2024. MOTION PASSED BY A UNANIMOUS VOTE.*

G. Consent Calendar: *MOTION BY COMMISSIONER LUTA, SECONDED BY COMMISSIONER APRILL TO APPROVE THE CONSENT CALENDAR AS PRESENTED. MOTION APPROVED UNANIMOUSLY.*

H. Declaration of Conflict of Interest: None

I. Old Business: None

J. New Business: (1:45:25)

1. Public Hearing and Deliberations. SPR/SUP 2024-02-Request by John Gallagher III regarding property at 8525 E Lincoln Rd (Parcel 004-030-001-00) for Bay View Distillery Tasting Room (Use: Tasting Room).

The Chair read the statement to open the public hearing.

Public hearing opened at 6:38 p.m.

John Gallagher III 8855 E. Strang Rd. presented for Bayview Distillery at Gallagher Farms stating John Sr., his grandpa Jack, purchased the property in 1963. They have operated and maintained the Cherry Farm for the last 60 years in Elmwood Township. As part of the distillery and the expansion they are seeking an approval for the use, a 1,000 sq. ft. indoor tasting room in their manufactured approved building. The proposed space can serve up to 46 patrons off of Lincoln Rd. tucked over 1400 ft. from the road, nestled in between 2 cherry orchards with a vineyard to the north. Patrons will be served spirits produced from on-site variety of fruits and grains grown locally on the estate paired with small plate offerings for up to 20 patrons. The operations of the distillery will sustain the agricultural activity of the farm while providing employment for year-round employees. Their aspirations are to enhance the farm and provide a future for the next generation in agriculture.

Public comment opened at 6:44 p.m.

Staff noted she received and gave the Commissioners letters from the public.

Elizabeth Clark 8461 E. Lincoln Rd. wanted to point out Section 9.8 that states, “the nearest residence is approximately 1,000 ft. away”, but they are only 800 ft. from the tasting room and overlook the distillery. They have been at the location for 13 years, prior to the Bayview Wedding venue and now added distillery/tasting room. They purchased the property because it sat in the middle of orchards and nature. The hours of operation are not reasonable because of the noise and traffic. They are also concerned about hazardous materials from the production process that causes black mold. Another concern is the excessive water use and the contamination into the Aquaphor.

Public comment closed at 6:48 p.m.

MOTION BY COMMISSIONER LUTA, SECONDED BY COMMISSIONER KUZMA TO CLOSE THE PUBLIC HEARING AT 6:50 PM. MOTION PASSED BY A UNANIMOUS VOTE.

John Gallagher III stated Bayview Distillery is proposing to apply for a small distillery license which is a qualification given by the state which allows you to produce up to 50,000 gallons per year. With that qualification and restriction, they’re limited on the amount they can produce. Being a farm to glass type of organization, they’re looking to be a boutique and not necessarily a commercial enterprise. If this operation runs for 8 hrs. it produces approximately 25 gallons of alcohol. Industry standards illustrate that a gallon of alcohol can be produced by using from 3-8 gallons of water from irrigation, to cleaning, prep, and sanitation. With that, in an average day the distillery could use 75-200 gallons in the manufacturing center. An average household of 4 people uses approximately 300-400 gallons of water per day. The risk of affecting the Aquaphor doesn’t exist; they’re not going to be using volumes that are going to either deplete or hinder the replenishment of said Aquaphor. Part of the contaminants; black mold was referenced, is notorious with aging the spirits. In aging with wooden barrels, the alcohol breathes through the barrel and there is evaporation. Commonly the whiskey fungus is seen in hot climate like Kentucky and Tennessee where they have hundreds to thousands of barrels stored in open-air barns for evaporation and aging of barrels. The black mold that is toxic and we’re all afraid of is not the same type of contaminant or threat to the environment, there is no threat to the environment, they’re producing alcohol at such volumes that the evaporation is not going to be a considerable matter and has been approved by the Health Department for the manufacturing center already. They are applying for the use of the tasting room, not the manufacturing portion of the facility. The hours of operation are what is permitted. Realistically, seasonally, they’re not going to be in operation 7 days a week from 10:00-10:00, it’s not economically feasible.

The Chair noted there seems to be a discrepancy in the distance from the neighbor.

John Gallagher III stated it was 1024 ft. from the nearest residence to the structure. If the point of reference is the parking lot to the parcel line, that could be 800 ft. So, the point of reference has to be relative.

The Commissioners discussed the project and entered into deliberations with draft findings of fact.

Conditions:

1. The Commission recognizes that a proposed text amendment has been filed for modifying multiple requirements for this use (and the Distillery use). If this amendment is passed, the Applicant may seek approval (under the appropriate process) for any and all requirements within said Amendment.

2. All requirements for Distillery Tasting Rooms at the time of permitting are incorporated as conditions of approval. This includes, but is not limited to the following: part, the following:
 - a. The distillery is licensed or will be licensed prior to occupancy by the appropriate Federal, State, and Local agencies. *Evidence of this must be provided to the Zoning Administrator prior to operation.*
 - b. The distillery is operated according to generally accepted agricultural management principles and the parcel shall have a minimum of five (5) planted acres of crop that is used for the on-site production of spirits unless the Planning Commission determines that a different minimum is more appropriate to meet the standards of Section 9.3 for the reuse of existing commercial structures. *The narrative states "The proposed child parcel (net) 18.05 acres are in production of grape vines, cherry trees, alfalfa and clover. The applying parent parcel exceeds the minimum required (5) planted acres)." At any given time during the operation of the Distillery Tasting Room, a minimum of 5 acres of crops shall be planted and used for the on-site production of spirits. (see condition 1).*
 - c. The maximum size of tasting room shall be 2000 sq ft. *(see condition 1)*
 - d. The hours of operation shall be between the hours of 10 am and 10 pm unless the Planning Commission determines that different hours are more appropriate to meet the standards of Section 9.3. *The narrative states "The Tasting Room shall operate between 10 am and 10 pm."*
 - e. Retail sales and food service must be clearly accessory to production of the spirit being processed on-site. The tasting room may offer food service provided:
 - i. The area for serving food shall seat no more than twenty (20) patrons at one time. *The narrative states that "Seating will be delineated for service and shall remain accessory to alcohol production." Prior to issuance of a LUP, the plans shall be delineated to show the area for serving food.*
 - ii. Sale of food shall not exceed 10% of gross sales of licensed products. At the request of the Township, the business shall provide supporting documentation to the Township verifying compliance with this section. This section does not limit the Township's ability to make documentation request in any other sections of the Zoning Ordinance. *The narrative states "The Tasting Room shall have a point of sale system that is able to track and report sales revenues."*
 - iii. Food service items shall be limited to appetizers and small plates. Carry-out foods are prohibited.
 - iv. Distillery shall be licensed to prepare and serve food by the appropriate Health Agency.
 - v. Amplified sound (including amplified music) shall be contained indoors and shall not exceed reasonable volumes, so as to avoid disturbance to any neighboring residents.
3. The Cover Sheet states that occupancy for the A-2 (Assembly) is 47 persons; this equates to approximately 16 required spaces for the Tasting Room (1000sqft). 24 spaces are required for the uses; 26 spaces are shown on the plan. The Planning Commission approves of the additional 2 parking spaces as indicated by Section 6.1.2.H.1.b of the Ordinance.
4. Recommendations proposed by the Fire Chief in his 4/15/2024 letter will be made a condition of approval. This recommendation includes:
 - a. As the building is currently under construction, a copy of the final Certificate of Occupancy is issued by the Leelanau County Department of Building Safety that includes the Tasting Room, shall be forwarded to the Fire Chief prior to its operation to the public.
5. The property owner is responsible for obtaining all other applicable permits. This shall be done prior to obtaining a Land Use Permit.
6. The Planning Commission is not approving any signage under this Site Plan Review. Any proposed signage will need to comply with the Zoning Ordinance and the property owner shall obtain a sign permit from the Zoning Administrator.
7. Once the project has been completed, the property owner or their representative shall submit As- Built plans in accordance with Section 8.6 of the Zoning Ordinance.
8. The project shall comply with all requirements of the Zoning Ordinance in effect at the time of approval.
9. The applicant stated that speakers will be indoors and inward facing.

MOTION BY COMMISSIONER KUZMA, SECONDED BY COMMISSIONER MIKOWSKI TO ACCEPT FINDINGS OF FACT AS MODIFIED. MOTION APPROVED UNANIMOUSLY.

MOTION BY COMMISSIONER LUTA, SECONDED BY COMMISSIONER MIKOWSKI THAT BASED ON THE FINDINGS OF FACT WE APPROVED, WE APPROVE THIS WITH THE DISCUSSED AND APPROVED CONDITIONS. MOTION APPROVED BY A UNANIMOUS VOTE.

2. SPR/SUP 2024-04 Request by TART Trails Inc. regarding property at 0 S. Lake Leelanau Dr. (004-140-001-00) for TART Trailhead Parking Improvements.

Chris Kushman Trail Planning Management Director at TART Trails located at 148 E. Front St. They are the owners of the Leelanau Trail between Carter Rd. and Suttons Bay. The proposed changes to the existing Fouch Rd. trail head are to pave the parking lot to add additional amenities such as a bike fix it station, a bottle fill station, a well to supply the bottle fill station, install necessary electrical for the bottle fill station, as well as a vault toilet. When they put it out to bid, they'll list

the vault toilet as a bid alternate so when bids are received, they'll see what the cost is and determine at that time if they want to do it, but they want to include it in the proposal. The reason for the paving instead of a natural surface is it's been so compacted over the years is that it is essentially an impervious surface, so they do have drainage issues, but they'll also be able to include more parking. Also, the Road Commission is in favor of the paved surface because the gravel carries over into the roadway. Commissioner Aprill asked if it would be maintained year-round, to which Kushman said it would be.

Commissioner Mikowski asked if there would be lighting, expressing concern for safety. Chris responded that it wasn't in the proposal, but they would be willing to add it if needed. Staff noted if there was lighting for a business in a parking lot, it has to be shut off at the end of business operations.

The Commissioners went through Findings of Fact and Conditions for approval.

Staff recommended a modification in the highlighted section to provide letter instead of email dated April 11, 2024 from Chief Tampa and inserting the 3 recommended conditions.

Conditions:

- 1) Prior to issuance of a Land Use Permit, a sealed and signed set of plans shall be provided to the Township.
- 2) Prior to issuance of a Land Use Permit, permits from all applicable outside agencies shall be provided.
- 3) Recommendations proposed by the Fire Chief in his 4/11/24 [received April 16, 2024] letter will be made a condition of approval. These recommendations include:
 1. Applicant shall comply with IFC standards for clear widths and the maintenance of all fire apparatus access lanes. *Reference: IFC 503.2.1 & 503.4.*
 2. "NO PARKING-FIRE LANE" signs are required and shall be installed along the northern edge of the parking lot and near the entrance drive. Signs are to be placed and visible to prevent obstructing the FAAL and support safe response and backing of emergency response vehicles. Pavement markings are recommended. *Reference: IFC 503.3.*
 3. Applicant shall provide address identification visible from the public right-of-way. Address identification and approved locations will comply, at a minimum, with IFC standards. The fire chief may approve a trailhead sign that utilizes regionally accepted language identifying the location. *Reference: IFC 505.1.*
- 4) Snow storage is proposed within a detention basin. The height of snow, nor its location shall interfere with clear visibility of traffic.
- 5) Pursuant to Section 6.1.2.B.6 of the Zoning Ordinance, "Every parking lot or parking area shall be so constructed that no surface water shall shed into or towards such body of water unless such surface water is first treated or filtered to remove any silt, grease or oil, salt or other matter which would deteriorate the water quality of said body of water. Snow removal from parking lot or parking area shall not be stored within the water edge setback unless contained to the parking area."
- 6) As the Applicant proposes to use existing natural vegetation to meet the requirements of the below sections of the Ordinance, the Applicant agrees that if the natural vegetation onsite no longer meets the below requirements, they will make appropriate modifications to ensure compliance with the Zoning Ordinance.

SECTION 6.1.4.B.6

 6. All off-street parking lots abutting a residential district shall be provided with a fence of not less than five (5) nor more than six (6) feet in height, constructed of materials sufficient to block the view of the parking lot from the abutting residential district. A living fence of not less than four feet, six inches (4' 6") when planted may be substituted to meet this requirement. Such fences shall be constructed of materials approved by the Zoning Administrator and shall be durable, weather resistant, and easily maintained.

SECTION 6.4.4 Buffers

 - A. Where a nonresidential use is adjacent to a residential zoning district or use, a minimum buffer of fifteen (15) feet shall be required along the perimeter(s) of the nonresidential site.
 - B. A buffer may consist of any or a combination of the following:
 1. Existing natural vegetation, provided that it provides substantial screening year around.
 2. Existing natural vegetation, augmented with additional plantings to provide substantial screening year around.
 3. A "living wall" of upright evergreen shrubs with a minimum height of five (5) feet within two (2) years of planting.
 4. Naturalized groupings of planted vegetation with a minimum of one (1) tree and four (4) shrubs per twenty (20) linear feet
- 7) The Planning Commission is not approving any signage under this Site Plan Review. Any proposed signage will need to comply with the Zoning Ordinance and the property owner shall obtain a sign permit from the Zoning Administrator.
- 8) Once the project has been completed, the property owner or their representative shall submit As Built plans in accordance with Section 8.6 of the Zoning Ordinance.
- 9) The project shall comply with all requirements of the Zoning Ordinance in effect at the time of approval.

MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER APRILL TO ACCEPT THE FINDINGS OF FACT. MOTION APPROVED UNANIMOUSLY.

MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER MCDONALD TO APPROVE THE PROPOSAL BASED ON FINDINGS OF FACT. MOTION PASSED BY A UNANIMOUS VOTE.

3. Comprehensive Plan Selection Committee: Staff reported the proposals are due Thursday at 2:00 p.m. and as part of the selection process, a member of the Commission will serve on the Selection Committee.

MOTION BY COMMISSIONER LUTA, SECONDED BY COMMISSIONER KUZMA TO RECOMMEND CHAIRMAN BECHTOLD FOR THE COMPREHENSIVE PLAN COMMITTEE. MOTION APPROVED.

K. Discussion on Zoning Ordinance:

1. Article 10-Nonconformities: Staff noted this came to her attention when she received a call for a non-conforming use, but a conforming structure, and if that structure were to burn down, could they re-institute the use. Article 10 is silent on that. She referred to the 2016 ZO which did state if there were an explosion or an act of God for a non-conforming use and a non-conforming structure it could be re-established. Obviously, there is a time frame. In speaking with the previous ZA, she said if it's silent, it's not allowed. Staff asked the Commissioners if this was something they wanted her to work on a text amendment for to modify. The Commissioners asked for a legal opinion from the Township Attorney.

Commissioner Roberts asked about the heading in Article 10.3. Commissioner Mikowski asked for clarification on Article 10.6. Discussion ensued. Staff said that she'll ask the Attorney to weigh in on that section as well.

2. Section 5.4-permitted uses with no requirements specific to use: The Commission was provided with a list of uses with no requirements specific to the use. The Commission determined that they would be ready to discuss at the next meeting.

L. Comments from the Chair: Commissioner Bechtold thanked the Commissioners for their preparation and their willingness to take on a homework assignment.

M. Comments from Planning Commissioners: None

N. Comments from Staff: Staff mentioned upcoming trainings, noting she will be at the MTA conference next week. She also noted the Agritourism Summit May 8th.

O. Public Comment: Elizabeth Clark, Rose Gallagher

O. Adjourn: *MOTION BY COMMISSIONER APRILL, SECOND BY COMMISSIONER LUTA TO ADJOURN THE MEETING AT 8:23 PM. MOTION PASSED UNANIMOUSLY.*