

Anderson Law



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November 20, 2023

Bernard Pishko
Norfolk City Attorney
810 Union St, Ste 900
Norfolk, VA 23510

Re. Armed Forces Brewing Company

Dear Mr. Pishko:

I am writing to you to express my sincere concerns for the abuse of process against my client, Armed Forces Brewing Company, at the planning meeting last week. The planning decision is aggravated by at least one current City Council Member indicating publicly that she will not support the conditional use applications of my client.

The questions directed to Mr. Beal by some of the planning commissioners last week were out of line and expressed arbitrary bias by some of the members. Questioning the CEO, Mr. Alan Beal, on whether he served in the military or what his political beliefs were had absolutely nothing to do with the question before the planning commission on what land use decisions should be made. A substantial part of the hearing, including all the public comments in opposition, were focused on whether the theme of Armed Forces Brewing Company is a theme the City of Norfolk should approve of. This is not a proper or legal standard for members of the City Council to consider next month.

As you know, Armed Forces Brewing Company has several conditional use permits to run a brewery out of a location where a brewery has previously run for the better part of a decade. The question of land use, and whether a brewery could and should operate in the present location, has been answered previously answered by the City Council in allowing a former brewery to operate in the exact same location. Armed Forced Brewing Company has taken careful steps to create a verbatim application package as has previously been approved and operates at this location by a former brewery.

A segment of the population of Norfolk does not want Armed Forces Brewing Company to move in – not because it is a brewery – but because there is a perception that owners of the brewery hold political opinions different than those in opposition. While that is the right of any citizen to speak to their government, it is the government's job to make land use decisions on a fair, level and predictable playing field and not to bow to political pressure of a group of citizens. For some members of planning to vote no, sent a signal that irrational prejudice supersedes lawful decision making.

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As you know, the City of Chesapeake was successfully sued in an analogous manner when the City Council bowed to the religious right in denying a palm reader conditional use permit. **Marks v. City of Chesapeake**, 723 F. Supp. 1155 (E.D. Va. 1988). The United States District Court found the decision of the City Council to be arbitrary and capricious in denying the permit request. I point this out to you urgently so that you can properly advise your City Council members of the legal liability of the decision to deny approval of a Conditional Use Permit pending before them.

What is 100% clear to me is that if my client was an activist brewery positively engaged in promoting LGBTQ ideas – the application would have sailed through planning, and I would not be writing this letter. Instead, my client is facing recommendations for the denial of their applications based on the speech and political positions of owners and the pro-military theme Armed Forces Brewing Company stands for.

§ 15.2-2288.3:1 of the Code of Virginia substantially limits the City of Norfolk from regulating the production of craft beer and usual and customary activities and events at such licensed breweries **shall** be permitted unless there is a substantial impact on the health, safety, or welfare of the public. The City of Norfolk cannot regulate the production of craft beer on Armed Forces Brewing Company in a location that the City of Norfolk previously zoned and permitted craft beer to be produced. Should the City Council vote to accept the recommendations of Planning and deny the land use applications of my client, the City of Norfolk should expect my office to initiate a suit under 42 USC 1983 and for remedies under Article 7 of Title 15.2 of the Code of Virginia.

I am hoping this letter will assist you in providing appropriate legal advice to members of the City Council. The City Council should be advised to limit its vote on one single land use issue – is the current facility an appropriate place for a brewery. This is what the staff of the Planning Department did when they recommended approval, and which is the only decision to be made here. If, however, the City Council makes this about politics and denies my client's applications based on speech, not only will my client prevail, but unlike in the *Marks* decision, my client will be able to evidence substantial compensatory damages putting taxpayers on the hook for a substantial monetary damages award.

I hope you take the time to advise the City Council members appropriately of the consequences of playing politics here. My client is not seeking special treatment, it is seeking fair treatment. Armed Forces Brewing Company will be a major asset to the City of Norfolk and a positive economic driver to the Railroad Business District.

Sincerely,



Timothy Anderson