TOWN OF
NEW LONDON, NEW HAMPSHIRE
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ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
July 28, 2014

Members Present: Bill Green, Chair; W. Michael Todd; Ann Bedard; Thelma Kaplan, Alternate; Paul Vance, Alternate

Members Absent: Cheryl Devoe, Douglas Lyon, Courtland J. Cross, Alternate

Also Present: Lucy St. John, Planning and Zoning Administrator

Meeting Opened and Roll Call:

Chair Green called the meeting to order at 6:30 PM, took the roll call, and observed that the meeting had been properly noticed. Thelma Kaplan and Paul Vance were asked to sit in as full members.

Colby Sawyer College, Lethbridge Hall for the ability to serve alcohol at the existing dining facility, "an on-campus pub." Located at 541Main Street. Tax Map 085-033-000. Special Exception.

Chair Green gave the floor to Attorney Brad Cook, attorney for Colby-Sawyer College, to present the application. A Special Exception has been requested to Article X, Institutional District, A (1) Uses Permitted. 1. College facilities and activities not specifically enumerated herein may be allowed by Special Exceptions provided that, in addition to the finding required by Article XXI, the Board of Adjustment shall determine that such Use is appropriate to the college.

Attorney Cook distributed a Memorandum of Law, a three (3) page handout regarding the College's request for a Special Exception in order to serve liquor at Lethbridge Lodge. Attorney Cook indicated the Planning Board had recommended the College apply to the Zoning Board for this Special Exception. Attorney Cook said the College had considered whether to appeal the Planning Board's decision to require this additional action, but decided to go ahead and request the Special Exception.

Attorney Cook said the institutional zone was created to make things easier for the College – its intention is to allow uses common to a college. He noted that Colby-Sawyer has served and sold alcohol on its premises for years – at the President's house and at events catered on campus. The College recently conducted a survey of other colleges and they did not find any non-sectarian colleges that did not sell alcohol under controlled circumstances. This information was included in the application materials submitted. For example, the Hanover Inn is owned by Dartmouth College.

Attorney Cook noted that the newly renovated Lethbridge Lodge will serve food for extensive periods during the day. He indicated the College is also offering a new brewing course for students in partnership with the Flying Goose Pub.

Frank Anzalone, the architect who prepared the site plan, provided a brief overview of the details of the Site Plan for Lethbridge Lodge which were recently approved at the June 24th Planning Board meeting. The location of the lodge and the distance to abutters was discussed, noting the distance is over 400 feet. Mr. Anzalone explained that if the ZBA grants this approval, the College will return to the Planning Board with an amended Site Plan, as the Site Plan was approved with conditions.

Ann Bedard inquired if Colby-Sawyer is granted a Special Exception, would the college only serve alcohol when students are on campus, or year-round? Attorney Cook replied that the College has had liquor licenses for various functions and buildings on the campus over the years, and yet was not required to appear before the Zoning Board to get them. He indicated that they would expect to serve alcohol year-round.

Chair Green asked what was the driving force for the College to now want a campus pub. Attorney Cook said there were several reasons including:

1. The college is offering a beer brewing class in conjunction with the Flying Goose restaurant. The students will be able to learn various aspects of actual brewing, marketing, communication and etc.
2. The College would like to be able to control how their students have access to and are being served alcohol. Noting that students could walk on campus, and not have to drive off-campus.
3. That controlling noise and the circumstances where students drink could be monitored.

Thelma Kaplan asked what kind of alcohol would be served and what is to prevent students under 21 from having access? Attorney Cook answered probably beer at first, perhaps wine. He said the Liquor Commission issues several different kinds of liquor licenses, all of which require precise information about the facility. Those licenses can be lifted if an underage person is given alcohol. He said students and patrons of the Lodge would be carded. The alcohol cannot be taken outside the Lodge. Food service staff would serve the liquor. The revenue from the sale of alcohol would go to the Food Service Department.

Michael Todd asked if having this campus "pub" would impair the value of the neighborhood. Attorney Cook said there would be no advertising of the tavern. In answer to a question about possible noise disturbances in the neighborhood, Attorney Cook said Lethbridge is quite central on campus – near the tennis courts and Susan's Swamp, so noise should be minimal. Attorney Cook emphasized that noise will be controlled and patrons supervised. Ann Bedard asked if campus police would be patrolling on a regular basis. The answer was yes.

Paul Vance asked if the proposed use could be considered as a special exception, and referred to the criteria used to justify the granting of a special exception. Chair Green clarified that this is an accessory use to having a dining center. Attorney Cook said this would be a normal college use, which is typical of colleges in general. The wording of the institutional zone is such that a pub is not mentioned. The College's argument is that this is an appropriate function within the institutional zone. Paul Vance then asked if that is the issue, is it the Zoning Board's place to determine the specific requirement, or does that belong to the Planning Board. Michael Todd referred to the criteria used to determine if a special exception should be granted. Mr. Todd asserted that if the College produces evidence on all those elements, the Zoning Board has to grant the special exception. He added, however, that the Zoning Board could add conditions. The site plan layout was projected, to determine if the ZBA had a specific questions about the details show on that plan.

Public Hearing Opened:

Chair Green asked if anyone in the audience had questions.

Colin Campbell, abutter at 213 Seamans Road responded that he was interested in knowing if Colby-Sawyer actually researched other colleges' use of alcohol. He asked how many students on campus are eligible to drink, maybe 200. Attorney Cook replied that all the colleges in New Hampshire have a liquor license, however the location and various factors of the liquor licenses do vary. The place where the alcohol is actually served varies from campus to campus, it could be located in a little corner of a pool hall, in a student center, part of food service, or a separate location like the Hanover Inn.

Michael Todd asked if the pub would be open to students only. Attorney Cook said no, it would be open to faculty and staff, or guests of students, and that the general public will not be invited. Ann Bedard commented that the College has lots of places to serve alcohol, so why add another building? Attorney Cook said they are trying to make it an attractive, focused place where students will go. The College does not want them to have a multitude of places to do that. The Lodge is attractive, central, and there will be after-hours food service offered, so this is the logical place.

Sandra Rowse, of 18 Sutton Road, abutter to the Flying Goose and resident who provides housing accommodations for Colby-Sawyer students. She said she was a parent of a former CSC student and a neighbor. She mentioned there are not a lot of places in this area where students can go. She has heard that students are very excited to take a beer brewing class. Ms. Rowse noted that the police regularly monitor noise levels. She likes the idea of the College having more control over drinking. She mentioned the Harry Snow property on the other side of campus. She noted that the College needs to learn how to control the drinking.

Attorney Cook responded there is always a careful balance when it comes to town/gown issues, but he thinks Colby Sawyer is meeting it.

Chair Green said he feels Colby-Sawyer's use of Lethbridge Lodge to serve alcohol is in keeping within the bounds of what probably many colleges already have, and the requested use is appropriate as a Special Exception. He noted that the lodge is in the center of campus and the closest neighbors would be on Seamans Road, but still be about 500 feet or so from residential homes. Ann Bedard commented that her only concern would be the neighborhood. Chair Green said he is less concerned about students drinking at the pub than he is about underage kids drinking on campus. He emphasized that 75% of students at the college are probably underage.

Michael Todd asked if it was the intention of the college to expand the capacity of the lodge. Frank Anzalone responded that they have added 300 sq. feet to the kitchen in order to be able to increase offerings on the menu. Mr. Todd said the Board is considering a Special Exception based on the information submitted by the College. Once the Zoning Board says "yes," Mr. Todd asked if the College plans on going back to the Planning Board and asking to double the size of the building. Mr. Todd emphasized that once the Board grants an exception, it cannot take it back. Paul Vance interceded that he thought this might not be a relevant issue of concern to the Zoning Board. Mr. Todd noted the Zoning Board could approve the Special Exception with a condition that no additional seating be added. Thelma Kaplan asked if the footprint changes with the addition to the kitchen. Frank Anzalone said yes.

Michael Todd said he felt the pub would not contribute to a disorderly development, and it probably would not increase the noise factor. There would be no adverse effect on the neighborhood. No issues to sewage, water or drainage. No impact on pedestrian and vehicular traffic. Ann Bedard noted that the Board has the ability to limit the number of participants and the time the pub can be open.

Attorney Cook responded that the liquor license regulates these things according to what seating is already in place. Chair Green asked board members how they felt about establishing a maximum for the number of people able to be in the pub at one time. Paul Vance answered he was against it. He feels the Board should leave it to the College to police the pub. Colby-Sawyer will already be regulated by the Liquor Commission and the New London Fire Department. Attorney Cook emphasized that the Liquor Commission will restrict the number of people allowed in the building at one time. He feels it is the obligation of the College to enforce this.

Ann Bedard noted that back in 1971 no alcohol was allowed in Town. Michael Todd noted that he provides some housing to some international students. He has heard that there is a lot of drinking on campus. He asked that College why they would want to have the additional liability by having a pub.

Chair Green asked if the public present at the hearing understood the discussion. There were no further questions or comments from the public or the board.

Public Hearing Closed.

Motion:

> IT WAS MOVED (Paul Vance) AND SECONDED (Thelma Kaplan) to approve Colby-Sawyer College's request for a Special Exception to Article X, Institutional District, A, to allow Lethbridge Lodge to serve as an on-campus pub, with the ability to serve and sell alcohol. THE MOTION WAS APPROVED UNANIMOUSLY

Colin Campbell, abutter at 213 Seamans Road then commented that abutters need to be more fully informed and be given more time once the notice of a hearing has been received. He also commented that the Memorandum of Law handout distributed by Attorney Brad Cook was not read into the record. Copies were distributed at the meeting. He suggested that it should have been read into the record. It was mentioned that the information about the hearing are posted online on the Town's website.

Christopher and Pauline Lizotte. Located at 598 Pleasant Street. Tax Map 048-010-000. Christopher and Pauline Lizotte are requesting a variance to Article XXII E (1) to allow for the construction of a new garage and a Special Exception to Article XXII G (3) to reduce the stream buffer.

Chair Green explained that with regard to the variance, the Lizottes wish to erect a new two-car garage to replace the current one-car garage; and with the Special Exception, want to reduce the stream buffer from 100 feet to 50 feet.

Mr. Lizotte explained that he and his wife have lived on their current property for 20 years. They want to replace their one-car garage with a larger, two-car garage. In order to do so, they need to reduce the stream buffer allowance from 100 feet to 50 feet. He said the purpose of a natural buffer is to maintain water quality, which runs off into Red Brook. "Natural woodland" implies trees, so that if said trees are cut, there could be additional run-off. Mr. Lizotte said his property has no "natural woodlands." There is a ridge that drops down in that area, and he and his wife will not change that. They do not intend to do any cutting or create any disturbance to the soil. He feels water quality would not be affected since woodlands do not exist in this area.

Chair Green asked if Mr. Lizotte was going to take the existing structure down and put up a new one. Mr. Lizotte replied in the affirmative. Mr. Todd noticed that there would be an additional 20 feet of pavement added to the new garage, and referred to note # 4 on the plan which read: There will be a slight net reduction in impervious surface of +/- 36 SF. Mr. Lizotte said that amount of pavement already exists and the net effect of the new construction will be a reduction in the amount of pavement. Mr. Todd noted that Mr. Lizotte would be doubling the roof area and there is currently no pavement where the addition is going. He said if we were looking at the pavement and the roof as impervious surfaces, if we were looking at them before and after the construction, would there be an increase or decrease? Mr. Lizotte replied it would probably be about the same. Mr. Todd said his concern is that this entire area is in the 100 ft. buffer. Water quality running into existing streams is of the utmost concern to the Board. He asked what steps Mr. Lizotte was taking so that the run-off will not be any worse than it is now. He asked, if you double the amount of the drip edge, what mitigating factors have you taken into account for erosion? Mr. Lizotte noted that the actual driveway pitches away toward the house.

Chair Green suggested that perhaps Mr. Lizotte would consider putting a gutter on the roof. Mr. Lizotte agreed and said he was also thinking about doing something with landscaping plants to help prevent run-off. Mr. Todd thought a rain trap might help.

Ms. St. John asked if there was any place on the property outside the buffer that the Lizottes could put the garage. Mr. Lizotte said yes, on the north side, but that is not where the driveway is. Chair Green asked, over and above what is there, maybe 12' by 24' at the most how much of a concern is this for the Board? Mr. Todd answered that it is all the other potential garages that could be duplicated if the Board continues to approve these things because it allows all these variances whenever anyone asks. He repeated that water quality is very important.

Chair Green asked Mr. Lizotte if there was anything about his construction plan that he would like to add. Mr. Lizotte said erosion control details are shown on the plan, including the use of silt fencing. Thelma Kaplan asked if he would plant any vegetation and Mr. Lizotte said yes, some shrubbery on the south side of the garage.

Public Hearing Opened:

Chair Green asked board members for input on the special exception to the wetland buffer.

Paul Vance asked if Mr. Lizotte's position is that there is no substantial disturbance to the natural woodland buffer, is that correct. Chair Green answered that Mr. Lizotte is saying there is no woodland/tree buffer there. Ms. St. John read into the record definition # 99 – Natural Woodland Buffer. Mr. Todd commented that the goal is to protect areas adjacent to the stream. Chair Green said Mr. Lizotte is saying the impact would be much greater if trees were being taken down. There are currently no trees in that buffer.

Chair Green suggested the Board talk about the criteria in the application and asked for comment from members. Mr. Todd said he was reiterating that the proposed structure does not adequately address the run-off question. He feels the rest of the conditions are met with the exception of that one. Possible erosion is his biggest concern.

Ms. St. John commented that the ordinance allows for a reduction of the buffer by a special exception. She also explained that a variance is requested, and must meet the variance criteria.

Paul Vance asked if G1 (B) says anything about an adverse effect on the environment. Mr. Todd said he would like to add a condition and then approve the application. Paul Vance asked, if Lizotte' s impervious surface is netted out or if he took care of the drip line, is that what we're talking about? Mr. Todd responded that Mr. Lizotte had the burden of showing the Board why no other area on that lot is going to work. Mr. Todd noted that he hadn't visited the site, but other members of the Board were more familiar with the property, noting the house and garage have been on the property for years, and that the existing and proposed garage is due to the natural topography of the site and other site conditions. Ann Bedard expressed concern about mitigating runoff down the slope.

Chair Green asked Mr. Lizotte for some suggestions to minimize erosion. Mr. Lizotte noted that a silt fence detail and other general notes on plan explain the erosion control measures to be taken. A suggestion was offered to consider a rain garden. Another suggestion was discussed to put in a stone drip edge around the garage, this would help filter any water and reduce water flow and to plant some non-invasive vegetation along the stream side. Ann Bedard commented that she felt gutters were an unnatural solution and that planting would be superior. Mr. Lizotte agreed that esthetically, shrubbery would be most pleasing. Ms. Bedard added that he should add more stone and ground cover to that area.

Chair Green clarified that the Board agreed that instead of gutters with a dry well, planting would be more effective on the Red Brook side, with additional stone and ground cover added. Mr. Lizotte concurred.

Motion:

> IT WAS MOVED (Bill Green) AND SECONDED (Thelma Kaplan) to approve the Lizotte' request for a Special Exception with the condition that a stone drip edge be installed around the new garage and that non-invasive plants, per the NHDES list, be planted on the stream side to minimize run-off and protect water quality. THE MOTION WAS APPROVED UNANIMOUSLY.

With respect to the variance requested, Chair Green said specifically erecting a structure is a prohibited use. Mr. Lizotte reiterated that he was happy to answer any further questions. Board members reviewed the variance criteria. Paul Vance asked if Mr. Lizotte would address the issue of whether there was an alternative site for the two-car garage. Mr. Lizotte said he did not believe there was, he wants to keep the garage where it has always stood as it will be the least impacting.

Chair Green reviewed the five issues. He feels the spirit of the ordinance will be maintained as outlined in Mr. Lizotte's request. Chair Green noted that the lot is a bit unique in its shape and topography, and the two car garage will be an improvement to both Mr. Lizotte's property and the neighborhood. Moving the garage to another site would make it a contrived fit. Chair Green maintained that Mr. Lizotte' s request was reasonable subject to the condition about landscaping that was discussed earlier.

There were no further comments.

Public Hearing Closed.

Motion:

> IT WAS MOVED (Michael Todd) AND SECONDED (Paul Vance) to approve the variance requested by the Lizotte's with the same conditions as included for the Special Exception. THE MOTION PASSED UNANIMOUSLY.

A brief break in the meeting was called at 8:00 PM. Discussion resumed at 8:03 PM.

TJM Enterprises, dba Flying Goose Brew Pub. Located at the corner of Routes 11 and 114, at 40 Andover Road. Tax Map 122-001-000.

The Flying Goose Brew Pub has requested variances to: (1) Article VI – Agricultural and Rural Residential District (ARR), Uses Permitted (A) a brewery operation/pub is not identified as an existing use permitted in the ARR district; (2) Article XX, Nonconforming Uses, A. Legal Nonconforming Uses (A.2) Change or Expansion. The applicant proposes to add brewing storage space and other building and site improvements; and (3) Article XX, Nonconforming Building and Structures, (B.2). The existing building is nonconforming, and the applicant proposes to expand the existing building.

Chair Green asked Tom Mills to explain the purpose of requesting these variances. Mr. Mills said initially he was just trying to get a building permit to make changes to the building. Mr. Mills stated he had been to the Planning Board three times regarding these upgrades to the building. He said his neighbors had issues with the original plans, so management reworked their whole approach to do what is best for the site and the neighborhood. There is no addition to the restaurant space – it is simply more dry and cold storage for a cellaring operation.

He acknowledged that the property is non-conforming. The building was constructed before zoning. Mr. Mills noted that the Flying Goose has been a continuously operating restaurant since the 1930's. He told the Board that the restaurant has been approved for various upgrades and variances in the 20 years they

have been there. The management wants to build a basement area to enclose storage space for three cold storage units and a trailer that's storing grain. They also want to move a very unattractive dumpster that is non-conforming.

Mr. Mills explained the proposed improvements which are shown on the site plan. Mr. Mills stated that the current dumpster enclosure will become a recycling area. He noted that the existing enclosure is not within the setback requirements but as soon as a fence is erected around a dumpster, then there are setback requirements. The management of the Flying Goose would like to increase parking where the old dumpster is now. The new dumpster enclosure will be closer to the kitchen. Mr. Mills feels this will clean up the Route 114 area. The management will also plan to put in additional landscaping.

Mr. Mills explained that the brewery addition is needed to simplify operations and to help reduce outdoor clutter. He noted that solar panels are proposed for the restaurant building, a rendering was shown. Mr. Mills noted that Fire Chief Jay Lyons had asked management to make code improvements to their boiler room – to coat it with sheet rock and put a sprinkler system in, which they intend to do. Mr. Mills also disclosed that the Flying Goose just received approval of their leach field as a wastewater treatment system, which will be installed September 1. He emphasized that the new system is for the brewing operation, not septic, just rinse water. The system will take all the protein solids in yeast grains out of the waste stream. He noted that other components of the brewing mash are composed.

Thelma Kaplan asked if the addition was going to be hooked up to the end of the dining room with a fireplace. Tom Mills responded with a yes. Ms. Kaplan asked if there are still going to be windows there and Tom said the view would be compromised by the roof line of the addition. Mr. Mills also mentioned that more landscaping would be added after the addition is built.

Lucy St. John reiterated that the Flying Goose application is included on the ZBA agenda, as she was not able to find in the Town records, those researched to date, that the brewery portion of the business was a permitted use or approved by the Town ZBA or Planning Board. She referred to the use permitted in the ARR zone, Article VI. The existing use is a nonconforming use. Initially the business was a restaurant and now there is a brewery there as well.

Ms. St. John explained that the ZBA can make a determination that a variance is or isn't required. Michael Todd said that he needed further information about the brewery operation. He wondered if the Flying Goose planned to do their own bottling in the future.

Chair Green remarked that it sounded like the town has no record that a brewery was ever approved. Lucy St. John agreed this was the case, based on her research thus far. Tom Mills noted that when the brewery was added to the restaurant, all building permits were applied for and granted. Tom Mills noted that the site has been used as a restaurant since the 1930s. Chair Green asked board members for their view with regard to the first variance requested, Article VI- given the fact that the brewery has been operating for almost 20 years. Paul Vance asked Tom Mills if he had made a search of his records from this period and Tom said he had not. Tom Mills made an analogy that if his restaurant is serving food and the kitchen also bakes and sells bread, is this a bakery, or just a component of the restaurant business. His analogy is the site has been a restaurant for years and he sells and makes beer for his customers, and how is this different from someone making bread to sell. He explained that he believed that he had already had approval to operate the restaurant and brewing, as they have been there about 20 years.

Ms. St. John reviewed the concerns identified in the staff report prepared for the Planning Board, a copy which was included with the ZBA materials.

Michael Todd commented that the issue is whether a brewery is an allowed use. Most of these types of businesses are in industrial zones. Mr. Todd noted that the Flying Goose is an industrial operation and this is a unique situation.

Tom Mills said there is a difference between a brew pub and a brewery. If he had wanted a brewery-type operation, he would not be in the restaurant business, he would be in a warehouse somewhere. He said the brewery at the Flying Goose is really a micro-brewery and will stay that way. They are not on the same level as an industrial brewery, which are distinctly different operations. Chair Green commented that the challenge in front of the Zoning Board is, in a sense, not what Tom is now doing or wants to do in the future, but those functions being confined in the neighborhood it's in. There needs to be a balance with the neighborhood. Mr. Green said that even though the restaurant's operation has gotten more involved and larger over the years, it still has to maintain harmony in a residential neighborhood. Mr. Mills responded that he thought they did a nice job running their business. It fills the void of the lack of a rest area or information booth in the area.

Brianna Mills commented that they are a restaurant with a microbrewery. They sell their beer in growlers. She noted that what they do is not the same as Ipswich Brewery or Smuttynose Brewery, noting that both of those breweries have much a bigger operation and are more production based. She noted the Flying Goose brews beer for the restaurant, to serve their customers.

Paul Vance said the Zoning Board is trying define what the restaurant is now doing and board members have a lack of knowledge about everything involved. He asked Tom if his license as a microbrewery is different than Ipswich. Tom replied that it was and Mr. Vance asked for an example. Tom said there are two different levels of beer manufacturing licenses. The Flying Goose could expand into cider-type products or get a license to be a manufacturer. He said as a brew pub, the Flying Goose can brew and sell their beer, but they cannot brew other fermented products like cider. Paul Vance inquired if there were any restrictions on how the Flying Goose can sell their beer. Tom Mills responded that the restaurant has to self-distribute or hire a third-party distributor. He noted the restaurant sells a few kegs here and there, but it is not a focus.

Public Hearing Opened:

Chair Green brought the discussion back to the first request for a variance of Article VI. He said he would be hard-pressed to take exception at this point to the fact that the Flying Goose has been an ongoing concern. Michael Todd agreed that the business is pre-existing and non-conforming. Chair Green urged board members to stay on this Article. Mr. Todd asserted that this was a big issue. What is this business's use exactly? It's a restaurant, but they are also brewing beer – a micro-brewery. Chair Green advised the board to get back to the "brewery" part. Mr. Todd said he needed to do additional research, that he did not now have sufficient facts.

Paul Vance asked Mr. Todd, say a restaurant comes in and says "We're going to make cheese in the basement and we're going to sell it in the restaurant." Is this the same thing? Chair Green responded that the question should be, "Is it an accessory use to operating a restaurant"? Chair Green noted the question is further complicated by the fact that the town has previously condoned the expansion of this operation and they have operated the brew pub for many years.

Mr. Mills noted that he has had building permits over the years and has never before now had to come before the Zoning Board of Adjustment. He enumerated for the board the many changes that have taken place at the Flying Goose over time. Lucy St. John agreed that the Flying Goose had been issued building permits in 2006, 2011, and 2012. She also noted that some Planning Board waivers had been granted, but none of these mention the brewery operation.

Mr. Todd said the Zoning Board's authority is only over the expansion of this operation. The business, in one form or another, has been at that location since 1930. Clearly it is a pre-existing, non-conforming operation. The question is, can it be expanded. Chair Green asked Mr. Todd if he felt Article VI, should not be before the board tonight. Mr. Todd said he was not sure. Ann Bedard noted that if the board members cannot say the Flying Goose has been an acceptable non-conforming use, they cannot go forward. Paul Vance asked the board if they were willing to accept that conclusion. He said we need to

give the applicant some direction. Chair Green said he felt if the board did not find in favor of Article VI, there was no further need to discuss the other two variances. Paul Vance commented that he could not see the board coming to the conclusion that the brewery is not a valid non-conforming use. If the board decides the operation is illegal, there are significant issues attached. He clarified that what the board was being asked to do tonight is grant a variance for the operation of a brewery at this location. Mr. Todd said that expansion of a non-conforming use is not the board's problem. Chair Green responded by posing the question, if the board feels the operation of the brew pub is an ancillary part of restaurant business? He said if the board accepts the fact that it is, than the Flying Goose does not need a variance for the brewery.

Chair. Green asked the board if anyone disagreed. Paul Vance asked for a more detailed definition of the words "non-conforming." Chair Green responded that because this property has been used in this fashion or a similar fashion starting prior to zoning and although it is now zoned ARR, it is a non-conforming use.

Mr. Todd suggested that the meeting be continued to another date.

Gary Surprenant, an abutter, said he needed clarification of what the Board was saying. Chair Green said the first variance, Article VI (A) – a brewery/restaurant operation is not approved in an AAR district. The brewery is part of the issue.

Michael Todd said there's been evidence presented that the brewery has morphed into a part of the restaurant business and is integral to that business. However, he felt he might have to do additional research on this question. He noted he would need to review if this is an estoppell argument.

Chair Green polled the board members to ascertain whether they felt the brewery was an accessory to the restaurant part of the business. Paul Vance, Ann Bedard, and Thelma Kaplan agreed that it was. Mr. Todd repeated that he felt the meeting should be continued - the board can take these issues under advisement and reach a decision at another hearing. Chair Green said if the restaurant was in a commercial zone, he did not think there would be any of these concerns.

Tom Mills asked if there was general consensus on the board. Chair Green said the question seems to be is this brewery a justifiable and legal part of the Flying Goose's operation? Lucy St. John suggested that the Board could make a motion to say the Flying Goose does not need this variance; or it does, or the public hearing can be continued at another meeting. Mr. Todd asked if this issue had been adjudicated before in a Zoning Board. He felt that information could be very helpful to this board.

Chair Green said he was satisfied that the Town has viewed this business as a restaurant/brewery for the last 18 years. He recommended the Zoning Board respond by saying the request is not necessary and not required.

Public Hearing Closed.

Motion:

> IT WAS MOVED (Michael Todd) AND SECONDED (Bill Green), Article VI, Agricultural and Rural Residential District (ARR) Uses Permitted (A), that the Zoning Board of Adjustment (ZBA) finds, based on the evidence put before us, that the operations at the location of the brew pub are all continuous and undivided and, as a whole, constitute an existing non-conforming use, and therefore, as such, constitutes a Legal Nonconforming Use.
>
> The ZBA then continued the meeting and public hearings for the remaining variances requested by the Flying Goose, to Monday, August 4, 2014 same time/same location.

Other Business:

Rules of Procedure: Ms. St. John noted that she only received comments on suggested edits from one members, but wasn't able to prepare a draft for the meeting. She suggested that the Rules of Procedure be discussed at another meeting. .

Approval of Minutes

IT WAS MOVED (Paul Vance) AND SECONDED (Bill Green) to approve the minutes of July 3, 2014 as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Motion to Adjourn

IT WAS MOVED (Bill Green) AND SECONDED (Ann Bedard) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

Meeting adjourned at 9:50 PM

Respectfully submitted

Chris Work
Recording Secretary