



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT MEETING MINUTES Monday, August 4, 2014 (Continuation of the July 28, 2014 meeting) 6:30 PM

Members Present: Bill Green, Chair; Douglas Lyon; Ann Bedard; W. Michael Todd, and Cheryl Devoe

Members Absent: Thelma Kaplan, Alternate; Paul Vance, Alternate; 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 and took roll call.

Review of Minutes:

The minutes and the Notice of Decision of the July 28th meeting were discussed. In an email from Paul Vance, a ZBA member he stated that brew pub operation is an ancillary use to the restaurant operation, and thusly a variance wasn't needed. A motion was made to clarify the posted Notice of Decision to read as follow: "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."

Ann Bedard said she agreed with Mr. Vance's recommendation to add that exact wording to the motion, and Michael Todd concurred.

Motion:

IT WAS MOVED (Michael Todd) AND SECONDED (Ann Bedard) to accept Mr. Vance's recommendation to clarify the wording of said motion to read:

"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 minutes would be amended to reflect the revised language of the Notice of Decision. THE MOTION PASSED UNANIMOUSLY.

Sandra Rouse, of 18 Sutton Road, an abutter to the Flying Goose Restaurant, was present at the meeting to clarify her statement on page 3 of the July 28 draft minutes with regard to her concerns about the amount of drinking taking place on Colby-Sawyer College's campus. She noted that she did not intend to disparage the College and considers their efforts to control drinking on campus to be appropriate.

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. Zoned ARR, Variances requested to the following:

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. Refer to the ZBA Notice of Decision of the July 28th meeting.
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. Continued from the July 28th meeting.
3. Article XX, Nonconforming Building and Structures, (B.2) The existing building is non-conforming, the applicant proposes to expand the existing building. Continued from the July 28th meeting.

Chair Green noted the purpose of this hearing was to continue the discussion regarding the Flying Goose Pub's request for three variances as listed above. Clearly, the board determined at the July 28th meeting that a variance regarding Article VI was not necessary on the grounds that the brew pub was a lawful pre-existing non-conforming use, as reflected in the motion.

Public Hearing continued from the July 28th meeting.

Chair Green then introduced Attorney David E. LeFevre, of the law firm Tarbell & Brodich, P.A., who is representing the Flying Goose in this matter. Attorney LeFevre distributed a Supplement to Application for Appeal for a Variance, which was briefly reviewed by board members. He remarked that since the ZBA had already made a decision regarding Article VI at the July 28th meeting, he would concentrate on the variances requested to Article XX, A.2 and B.2.

Chair Green suggested that the Board start with Article XX, Nonconforming Building and Structures, (B.2) The existing building is non-conforming, the applicant proposes to expand the existing building. Continued from the July 28th meeting.

Attorney LeFevre responded that his comments would cover both sections. He feels these statutes apply to changes in use that are substantially different. He maintained that if the proposed expansion reflects the existing non-conforming use, or a different way of utilizing that use, then perhaps a variance is not necessary here. In addition, Attorney LeFevre does not feel this addition would have a substantial effect on the surrounding residential neighborhood. He noted that the restaurant already has storage containers on the property and just plans to cover them with a structure. The new foundation will go in at the same location as the existing retaining wall situated closest to Route 11. Another point made by Attorney LeFevre is that the set-back from the awning is 22 feet, and the front entrance is 31 feet. These two bump-outs were originally permitted because they did not bring the building any closer to the road. He repeated that the restaurant is not increasing the non-conformity of the existing building by getting closer to the road, as the proposed addition is to the rear of the building.

Bill Green said he recently took a tour of the property and asked Attorney LeFevre to show the rest of the board what he was talking about on the projected image of the property so they could visualize it. Attorney LeFevre did so and pointed out the one-story addition on the plan. He noted that the way the ordinance is written, an owner can expand a non-conforming structure if he does not increase the non-conformity.

Doug Lyon asked why the Planning Board thought a variance was required. Lucy St. John provided an overview stating that the applicant was on the July 22nd agenda for Site Plan Review, and based on her recommendation, he was directed to go to the ZBA for several variances, as the files didn't include

information on variances for the use or expansion of the use. The Zoning Board makes the interpretation of an ordinance and can decide whether a variance is required.

Chair Green reiterated that Article XX B.2 allow the expansion of a building provided it is not made any more non-conforming. He feels the question before the board tonight is the setback in this district is 50 feet. If someone is going to expand the building, do they need to have the 50 foot set-back, or, since this is an existing non-conforming building - the awning is 31 feet - does it even require a variance? Doug Lyon commented that it was certainly obvious that the proposed addition does not encroach any further on the setback from the road. If that's the only question, it's obvious. Mr. Lyon said he believes another issue is the increase of the footprint. He asked, does the increase in square footage also increase the non-conforming use? Cheryl Devoe answered no based on your reading of the ordinance, it relates to the setback. Doug Lyon commented that based on what Cheryl had just read, then square footage is not considered in the equation.

Michael Todd repeated that "non-conforming buildings shall not be expanded" – what about that?

Chair Green noted that he sometimes calls the NH Municipal Association to get information and ask questions, which he recently did about this specific case. An attorney who took his call asked if the addition was encroaching more than the front yard (31 feet), and the answer was no. Said attorney did not see an issue if that was the case. Mr. Lyon asked if there was a setback issue on either the back or sides of the building. Attorney LeFevre answered there was not. Doug Lyon then commented that based on the reading of that specific ordinance by Cheryl Devoe and based on Bill Green's comment about what the attorney at the NH Municipal Association said, it looks as if no variance is required with reference to the expansion of the existing building.

Public Hearing Closed.

Motion:

IT WAS MOVED (Doug Lyon) AND SECONDED (Ann Bedard) that with regard to Article XX, Nonconforming Building and Structures, (B.2), the Zoning Board of Adjustment finds that, based on the evidence put before us, no variance is required with regard to the expansion of the existing building with a single-story basement level addition. **THE MOTION PASSED UNANIMOUSLY.**

Chair Green opened discussion regarding the last remaining variance requested by the Flying Goose Pub concerning Article XX, A. Legal Nonconforming Uses (A.2) Change or Expansion.

Public Hearing Opened:

Attorney LeFevre said he was going to suggest the same position used in the discussion of the previous variance (XX, B.2). He noted there is not going to be any change in use. The Flying Goose already has existing storage space, which is now outside the building. The management wishes to relocate this dry and cold storage indoors. There are no new seats at the restaurant, so there is no expansion there. Attorney LeFevre said relocating the dumpster does not constitute a change in use, but instead will make a dramatic improvement in appearance of the restaurant on Route 114, and makes the property less non-conforming.

Chair Green asked Attorney LeFevre to concentrate on the inside of the building – on what exists now and the area which is going to be used for storage. Tom Mills said the restaurant currently has two outdoor coolers. He is planning to put in 240 sq. feet of coolers and enclosing them. He noted the restaurant currently has an 8 x 15 ft. trailer and that would be part of the inside space. There would be

roughly 400 sq. feet enclosed exterior storage and the remaining space will hold oak barrels. Mr. Mills said the new footprint will be more user-friendly. The restaurant will be able to add two additional parking spaces.

Michael Todd asked if the silos were attached to the boiler, and Tom Mills responded in the affirmative. Bill Green asked if there would be any walkways or landscaping added. Attorney LeFevre said he believed the Planning Board might have some requirements about that. The applicants have been trying to work with neighbors. Attorney LeFevre said he was sure the Planning Board might have some additional questions and the applicants will do whatever the Planning Board recommends.

Chair Green asked if anyone in the audience had any questions.

Gary Surprenant, an abutter, asked whether it was possible to relocate the dumpsters (from the proposed location) to the other side of the building, as they would be visible from his house. Tom Mills responded that the Selectmen had determined a fenced-in area there would not meet set-back requirements. Tom commented that without a fence, they could put the dumpsters anywhere. Attorney LeFevre emphasized there is a safety issue getting to and from the dumpsters given the winter weather. This change will make it much safer for employees.

Tom Mills said at this time, the bottle dumpster is not fenced and it is noisy when they dump bottles. The management has agreed to dispose of the bottles at 10 in the morning, when it is less disturbing to their neighbors. They will have four dumpsters in the enclosure, one for general garbage, one for glass, one for cardboard, and one for grease. Three of these are recyclable. Because the dumpsters will be in a gated, enclosed space, this should provide some sound buffer.

Ann Bedard asked what's to prevent the Flying Goose from needing more storage space. She also asked what happens with this enclosed dumpster space if management eventually has to add more items. Would they move some of the dumpsters out and put them somewhere else on the property? She asked, what's to prevent the restaurant from using the storage space for some other purpose? Attorney LeFevre responded that the applicant is asking for permission to use the structure for storage. If management wants to change that use, they would have to come back to the Zoning Board to do that. Doug Lyon wondered what would happen if management eventually wanted to increase seating capacity. Attorney LeFevre answered that the Flying Goose would have to go back to the Planning Board for Site Plan review.

Tom Mills emphasized that what they are trying to accomplish now is to run this thriving business more smoothly. He said if they wanted to expand the brewery throughout New England, they would look for another location. He told the board that he is trying to meet the demand for the seats they have at the restaurant now. His focus is on what they can do within the walls of the current operation. He would rather expand hop growing and gardening. Mr. Mills noted that a year ago, he sought to build a second floor function room, and withdrew that request because it required extensive manipulation of the site and parking issues. Mr. Mills said they are pretty close to maximizing what they can do on this site.

Doug Lyon commented that these questions would not be raised if the restaurant was in a commercial zone, but he is worried about expansion in an agricultural zone and would be interested to hear what the neighbors have to say. Mr. Lyon added that he would go further and say as he looks at what is being proposed here, it is difficult for him to consider this as an expansion of an existing use. It simply relocates what is now outdoors to inside the restaurant.

Michael Todd noted that the brewery classroom is a fundamentally a different use. Tom Mills clarified that the brewery classroom would be located at Colby-Sawyer College (CSC). Tom Mills explained that

the CSC students will come to the site to observe the brewing process, but it is not going to be a classroom. Doug Lyon said it does not appear a variance is needed because this is a non-conforming use. Michael Todd said that based on the evidence, he seconded that. Doug Lyon cautioned that he thinks the board has to be careful that expanded space is expanded use. Expanded space has to do with the setback.

Chair Green said there seems to be a three-prong test here: (1) the extent the use reflects the nature and purpose of the non-conforming use; (2) whether the use at issue is merely a different manner of utilizing the same use, or constitutes a new character or nature of some kind; and (3) whether the use will have a substantially different effect on the neighborhood, which it won't. Chair Green commented that what the restaurant is proposing to do is create a structure to house items that are now kept on the outside of the building. It will improve the property.

Doug Lyon and Cheryl commented that the proposed addition to enclose the uses is a positive improvement. Bill Green commented that the site is getting maxed out spatially.

Public Hearing Closed.

Motion:

IT WAS MOVED (Michael Todd) AND SECONDED (Bill Green) that with regard to Article XX, Nonconforming Uses, A. Legal Nonconforming Uses (A.2) Change or Expansion, the Zoning Board of Adjustment finds that, based on the evidence put before us, no variance is required to add brewing storage space and other building and site improvements. THE MOTION WAS APPROVED UNANIMOUSLY.

Other Business:

- Rules of Procedure – Lucy St. John said she has only received comments on suggested edits from one member so far. Lucy St. John suggested since all the members were not able to attend this meeting, that the discussion on amending the Rules of Procedure be postponed to a future meeting date. Also this will enable the members to suggest edits they would like to have considered. Board members were reminded to submit suggested to Ms. St. John.
- Future meeting dates - Lucy St. John suggested scheduling Zoning Board meetings for at least the rest of this year might be a good idea. That way both the public and board members would know when a meeting is going to take place and could plan for it. Bill Green asked how many hearings the Zoning Board had last year. Lucy St. John commented she thought six, but was not sure of the exact number. He clarified that once an application comes in, it has to be heard by the board within 30 days, which Lucy St. John confirmed. Chair Green wondered what the issue was – he does not understand why notice to abutters cannot be accomplished sooner than the five days before a meeting. Also, Chair Green was concerned that an applicant might have to wait too long for a hearing if meetings are pre-scheduled. He feels the argument has to be how best to serve the applicant – and last time this was discussed, it was concluded that flexibility was better for the customer. Michael Todd wondered how accommodating the board had to be. Ann Bedard commented that pre-scheduled meetings did not seem consumer oriented. Board members agreed it would be valuable to schedule a training session and discuss these two topics at that meeting. Chair Green emphasized that was fine, as long as training on variances was included, which would be helpful for the new members. Doug Lyon wondered whether Town Attorney, Barton Mayer could be present at that session, but it was decided it would be too expensive to have him there and it was suggested that Kim Hallquist, our town administrator, could fill in. Lucy St. John will contact board members with some possible training session

dates. Ms. St. John would also look into when the New Municipal Association (NHMA) Fall Workshop would be scheduled.

Kozain Trust property on Page Road. Tax Map 117-021-000. Ms. St. John explained that Clayton Platt, the surveyor has contacted her following the ZBA approval of July 2nd with some specific questions regarding the variance. She reviewed this with Kim Hallquist, Town Administrator. Mr. Platt wanted to change the lot configuration, slightly, but it would be different than what was approved by the ZBA and would impact the percent of wetlands. Ms. St. John had advised Mr. Platt this would require the applicant to come back to the ZBA, he said he only presented a conceptual layout to the ZBA, and thought she could make an administrative decision, that it wouldn't need ZBA review again. She said this is not correct, and informed him that he would need to come back to the ZBA. The ZBA concurred that the applicant would need to submit a new variance application. The Board also discussed that application submitted to the Board should include a certified plot plan, stamped by a NH licensed surveyor.

Motion to Adjourn:

IT WAS MOVED (Bill Green) AND SECONDED (Cheryl Devoe) to adjourn the meeting. **THE MOTION WAS APPROVED UNANIMOUSLY.**

Meeting adjourned at 7:45 PM.

Respectfully submitted,

Chris Work
Recording Secretary