

**VILLAGE OF PITTSFORD**  
**PLANNING AND ZONING BOARD OF APPEALS**  
Regular Meeting December 10, 2018 at 7:00 PM

**PRESENT:**

Chairperson: Justin Vlietstra  
Members: Jo Anne Shannon  
Renee Stetzer  
Susan Lhota  
Eli Bannister

PZBA Attorney: Mindy L. Zoghlin, Esq.  
Recording Sec: Linda Habeeb

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to call the meeting to order at 7:10 pm.

**Vote:** Shannon - yes; Vlietstra - yes; Lhota - yes; Stetzer - yes; Bannister - yes. *Motion carried.*

**Conflict of Interest Disclosure:**

- Member Vlietstra stated that he will recuse himself from the discussion for the 75 Monroe Avenue application because he has made statements on the record in the past regarding this application.
- Member Vlietstra stated that he had a number of discussions with the Building Inspector/Code Enforcement Officer, Mayor, and possibly other officials regarding the 50 State Street application. These conversations primarily regarded what reviews are necessary for the project, what sections of code were relevant, and the status of various reviews. These discussions are routine steps as part of the administrative process of handling applications. He further stated that he attended Trustee Meetings on September 11, 2018 and October 23, 2018 where this project was prominently discussed. He stated that he does not believe he made any comments at these meetings, but he did listen to the discussion. Additionally, the Planning Board received a referral for the environmental review and waterfront consistency review for this project when they applied for moratorium relief, but the application was later withdrawn. Those referrals led to various discussions about this project. He stated that he can fairly review the application before the Board, but wanted to disclose this information.
- Member Stetzer stated that in July and August, there was an application before the Board of Trustees for relief of the moratorium so that two potential tenants would be allowed to apply to operate in Northfield Common. She stated that she was not able to attend the July 10th meeting, so she submitted a letter in support of consideration of relief of the moratorium and to encourage an open dialogue with the public about that decision. That letter is in the public record and was provided for tonight's meeting. She further stated that at the August 14th meeting, she made a statement in support of relief of the moratorium so the two potential businesses would be allowed to apply. She further stated that she does not know anyone involved with any of these businesses or the owner of Northfield Common. She also stated that she does not have anything to gain financially from the outcome of this. As a citizen, she was expressing her desire to have an open dialogue with businesses that want to open a business in the village and not create

unreasonable barriers to small business owners. She believes the Village's zoning laws and policies must be applied and enforced and feels she can fairly do that.

**Board of Trustees, 50 State Street ~ Appeal from an Building Inspector's determination**

**Present:** Don Young, Boylan Code

**The legal notice was published in the Brighton-Pittsford Post on November 22, 2018:** *"Please take notice that a public hearing will be held before the Village of Pittsford Zoning Board of Appeals at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday December 10, 2018 at 7:00 pm, to consider an appeal filed by the Village of Pittsford Board of Trustees from an opinion of the Building Inspector of the Village of Pittsford, dated September 28, 2018, which determined that the Hawley Brewing Company Special Permit Application for 50 State Street to the Board of Trustees of the Village of Pittsford, dated July 6, 2018, was a use permitted in the B-4 Zone in the Village of Pittsford."*

**Discussion:** Chairperson Vlietstra explained that Hawley Brewing Company is proposing opening a brewery at 50 State Street. The application has been before the Board of Trustees as part of a moratorium relief request. The former Village Building Inspector/Code Enforcement Officer, Steve Lauth, made a determination that the brewery is not a restaurant and that it is an agricultural processing use, which is permitted by the Village Zoning Code. In the determination that the use is a permitted use, the business can operate without any approvals from Village Boards. This determination has been appealed by the Board of Trustees to the Zoning Board of Appeals. One of the purposes of the Zoning Board of Appeals is to hear appeals of zoning law determinations made by Village Officials so that it is not necessary to go to court, thereby keeping costs down and getting to a swift resolution of the dispute. For this review, the Board will be effectively acting as the Building Inspector/Code Enforcement Officer and conducting a new review. The Board can agree with the determination, overturn the determination, or modify it. Ms. Zoghlin explained that the Board's scope of review is "de novo," meaning that the Board can make whatever determination the board thinks the Building Inspector/Code Enforcement Officer should have made at the time that he made the determination, even if it isn't affirmed, overturned, or modified.

Chairperson Vlietstra stated that the process for this meeting will be to first clarify what, exactly, is proposed. The representatives from the Hawley Brewing Company will have an opportunity to describe their project. Next, the Board will hear arguments from the Village representatives regarding their arguments about this appeal. The representatives from the Hawley Brewing Company will have an opportunity to respond and present their arguments. Then the Zoning Board will ask questions and the public hearing will be opened to hear comments from the public. If the Board does not render a decision at this meeting, the public hearing will remain open, and public comment will continue to be accepted at the following meeting.

Chairperson Vlietstra asked the applicants to explain the proposal. He stated that there has been some confusion as to what is being proposed. The drawings that were presented to the Board are dated July 6, 2018, but reviewing the record, it appears that the proposal has changed. The proposal involves some form of brewing beer and some form of serving food, but it's not clear if the applicants are proposing a restaurant that brews some beer, a brewery that serves some food, or a brewery that does not serve food.

Mr. Young explained that he is the attorney for both the landlord, Northfield Common, and the proposed tenant, Hawley Brewing Company. He commented that it is unusual in this appellate process for the respondent to move first, as typically the party that filed the appeal would present their case and then the respondent would respond. He stated that it is the Village's responsibility to submit the record. Chairperson Vlietstra stated that the Board is asking that he explain exactly what is proposed, then the Village will present their arguments for appeal, and then the

respondent will be given an opportunity to respond to the Village's arguments. Mr. Young stated that he is not going to authenticate whether or not the Village record is complete.

Ms. Zoghlin explained that the application before the Board is dated July 2018, and the application states that Hawley Brewing Company is requesting a special permit to open a restaurant, with the focus on offering the community an in-house brewery with high-quality beers. It further states that there will be a kitchen on the premises, and they will engage with local caterers and restaurants to provide food for purchase by customers. The application also states that alcohol will be incidental, and not the prime source of revenue, and includes an application for a New York State Liquor License. It indicates that the business will be a brewery/restaurant. Ms. Zoghlin explained that the Board wants to know if Hawley's intent with respect to this project has changed, or if this is still what Hawley is proposing. Mr. Young Stated that the determination was with regard to whether a brewery is permitted use in a Canal B-4 District. Ms. Zoghlin stated that the Board's role is to make whatever determination the board thinks the Building Inspector/Code Enforcement Officer should have made at the time that he made the determination. In order for the Board to perform its obligation, they need to know what exactly it was that the applicant was asking the Building Inspector/Code Enforcement Officer to interpret or determine. The Board needs to know if the July 2018 application is the same application on which the Building Inspector/Code Enforcement Officer rendered his decision. If there were changes or if there were discussions with the Building Inspector/Code Enforcement Officer agreeing to modifications then this Board does not have a record of those modifications. The Board needs to know if the July 6 application is the same application that the Building Inspector used for their determination. If they are the same that is fine, if they are not the same then this Board needs to know what modifications occurred.

Mr. Young requested that the Board read the determination made by the former Building Inspector/Code Enforcement Officer. Ms. Zoghlin stated that the original determination is really not relevant, because the Board is going to review the proposal and make a *de novo* determination based on the facts that were before the Building Inspector/Code Enforcement Officer when he made his determination. Mr. Young stated that the jurisdiction of the Board is appellant only, and therefore, it is relevant what determination is being appealed. Ms. Zoghlin stated that she disagreed with Mr. Young's analysis. Chairperson Vlietstra asked the Recording Secretary to read the determination:

After much review and contacting NYS Department of Agriculture and Department of State Land Use and Resources Divisions, I have come to the determination, based on the NYS Department of Agriculture's definition that wine and distilled spirits are considered "foods," and the production of beer is parallel to these items that it also will be considered a "food" when new definitions are produced by NYS. It is the opinion of the NYS Department of Agriculture that a "food" derived from natural ingredients is created by agricultural production, and thereby the brewing of beer could also be considered an agricultural production. This finding would make the Brewery a proper use under the current B4 zone in the Village of Pittsford.

Mr. Young stated that the applicant is proposing a brewery in the B4 District. The primary purpose is to brew craft beers at 50 State Street in Northfield Common plaza, and then to sell the beer for either consumption on site, filling of growlers, or other means of sale.

Ms. Zoghlin stated that this is not a request for an interpretation in the abstract; this is a request for an interpretation with respect to a specific proposal. Under NYS Village

Law § 7-712.B.1, the Zoning Board of Appeals can reverse, affirm, or modify the decision, and the Board has the power to make whatever decision the Board decides should have been made by the Building Inspector/Code Enforcement Officer. The Board has the same powers that the Building Inspector/Code Enforcement Officer had when he made the determination. The Board's job is not to determine in the abstract whether a brewery is permitted as of right in the B4 district. The Board needs to determine whether this application is for a use that is permitted in the B4 Zoning District.

Member Vlietstra repeated the original question: is this a restaurant that brews beer or is this a brewery that may or may not serve food? Member Vlietstra stated that based on Mr. Young's comments, it sounds like the primary purpose of the brewery is to brew beer for consumption and tastings on site. Mr. Young explained that the Village directed the applicant to make the application for the brewery as an application for a restaurant, so they amended their plans to include a restaurant component. But after they did this, the Village told them that restaurants are prohibited by the moratorium. Then they submitted an application for an exception to the moratorium. Mr. Young stated that two months after they submitted the application for an exception to the moratorium, he received an email from the Village stating that the brewery/restaurant was not permitted in the B4 Zoning District. He stated that he requested a determination from the Building Inspector/Code Enforcement Officer as to whether a brewery was permitted in the B4 District. The Building Inspector/Code Enforcement Officer made the determination that the brewery was permitted in this Zoning district, and the Village Board decided to appeal the Building Inspector's determination to the Zoning Board of Appeals.

Ms. Zoghlin stated that the Village agrees with the applicant that it is the Village's responsibility to maintain the record, but all the Village has is the July 6, 2018 application, so if there were changes that were submitted by the applicant, the Village does not have copies of the changes. She asked that the applicant provide these documents, because they are something that the Board is required to consider in evaluating what determination should have been made with respect to this application. Mr. Young stated that the applicant will re-submit any plans that are missing from the record.

Mr. Young introduced the applicant, Clay Killian, and asked him to explain his proposal. Mr. Killian stated that Mr Young covered the situation well. He would like to collaborate with local restaurants and business. He initially submitted a proposal to the Village Board for a restaurant as guided, thinking that would move our project forward. Member Vlietstra stated that the original plans included a kitchen, and he asked the applicant if the proposal includes a kitchen. Mr. Killian stated that the plans were subsequently modified to eliminate the kitchen. Ms. Zoghlin requested that the plans be date-stamped to indicate when the modification to the plans occurred, so the Board knows if these changes occurred before the Building Inspector made their determination. The Board also requested copies of any correspondence that occurred between the Building Inspector and the applicants.

Mr. Vlietstra stated that emails exchanged between the Building Inspector, Mr. Young, and Hawley Brewing Company have not been submitted to the Board. If plans were modified via email conversations the Board is not aware of these.

Member Vlietstra asked Mr. Turner, as representative for the Village Trustees, to speak. Mr. Turner noted that the submission from Mr. Young was received by the Village on the day of this meeting at approximately 3:15 in the afternoon. He requested that he have an opportunity to respond to this submission after he reviews it. Member Vlietstra stated that the public hearing will be kept open so that there will be an opportunity for a response to this submittal.

Mr. Turner questioned whether revised plans were submitted to the Village, and that if they were submitted, the Trustees did not have an opportunity to review them. He stated that the Building Inspector most likely made his determination based on the original plans submitted by the applicant. He further stated that the Trustees filed the appeal not because they are against breweries, but because they are against a use as of right which will bring with it a potential for impacts on the neighborhood, in regard to parking, trash, odor, noise, etc. If this comes in as a matter of right, without any form of oversight from any board, there is no opportunity to condition those impacts. He said that as this proposal is described in the application, it is a restaurant. He further stated that in terms of whether or not this is a permitted use, he agrees with Mr. Young that the statute has to be construed against the interests of the Village, but he referred to the language of the statute which excludes businesses "such as distilleries." He stated this opens the prohibition up to any business in the same classification as a distillery; the business doesn't have to be a distillery, it just has to be like a distillery to be prohibited.

Mr. Turner stated that the product is a finished product: processed agricultural products combined into a brand new product. It's necessary to malt the barley, which is similar to grinding wheat for flour. It's not the processing of agricultural products; it's the end product. The former Building Inspector/Code Enforcement Officer determined that the brewing of beer is agricultural processing, but it is not. The brewing of beer is production; it's the next step after the agricultural processing. According to the proposed floor plan, only 15 percent of the space is devoted to brewing, which indicates that the brewing is an accessory use, not the primary use.

Mr. Young stated the last time he came before the Planning Board was a few years ago to repave a parking lot and it took a lengthy amount of time to get that approved; he hopes for a quicker result this time. Mr. Young stated that this process began in March 2018 when the applicants applied for a brewery. He stated that it is disingenuous for the Village to claim that this is an application for a restaurant. The applicant has stated that he was guided by the Village to propose a restaurant, and then it was determined that it wasn't permitted. Mr. Young pointed out that during the pendency of this application, Lock 32 Brewing Company came before the Village Board requesting an expansion of their business to allow for additional seating, and that application was granted. This applicant is requesting to put in a brewery at 50 State Street, the primary purpose of which is to manufacture and serve craft beer. We don't want to install a kitchen, we just want to create and serve craft beer. Mr. Young further stated that the appeal documents make the argument that since there is a service and sale portion of the brewery that is a larger portion of the brewery, that it is no longer a brewery. He pointed out that most craft breweries have a tasting area. Sales and service operations are an integral part of craft breweries. New York Alcohol

and Beverage Control Law § 51(3) provides that a licensed brewery includes, as part of its licensed operations, the ability to “conduct tastings of, and sell at retail for consumption on or off the licensed premises, any beer manufactured” by the brewery.

Mr. Young stated that New York law is clear that when a local zoning ordinance is ambiguous, it must be construed and interpreted in favor of the applicant and against the municipality. We could argue that the “processing of agricultural products” should be narrowly construed to only include mashing, and milling, and preparation of raw agricultural products and nothing more – no end production as the Village claims. However, there is more than one reasonable argument on how to interpret the code. The law says the code must be interpreted in favor of the applicant. It’s the Village Board’s job to make sure their code is clear because it’s not fair to a land owner to be subjected to the whims of the Village Board applying the code ad-hoc differently to different applicants. Here we have the code being applied to us differently than it was to Lock 32 Brewing Company. “Processing of agricultural products” is undefined and the courts often direct that when a term in a zoning ordinance is ambiguous, it must be given its “plain meaning” by way of a dictionary. Since the phrase “processing of agricultural products” is not defined in the Code, one must look for its plain meaning outside of the Code.

Miriam Webster’s dictionary provides the following definitions:

- “Process” means to subject to a special process or treatment, as in the course of manufacture or film development.
- “Agriculture” means the science, art, or practice of cultivating the soil, producing crops, and raising livestock, and in varying degrees, the preparation and marketing of the resulting products.
- “Agricultural” means of, relating to, used in, or concerned with, agriculture.
- “Products” means something produced.

The processing of beer includes malting, milling, mashing, lautering, boiling, fermenting, and sometimes filtering, and bottling and selling the beer. The question is whether the process deals with agricultural products. Mr. Young stated that the ingredients for making beer, grain, hops, fruits, and vegetables, are agricultural products. You could make an argument that another interpretation was intended in Village code, but that isn’t what the law says. The law says ambiguities must be resolved in favor of the applicant. He stated that New York State clearly favors and encourages the craft brewery business in New York as a means of supporting agriculture. New York adopted strong legislation in 2012 supporting the craft brewing industry. The Village makes some arguments that malted grains are not agricultural products because they previously received some processing off-site. However malted grains are grains, they are germinated and dried and the result is 100% barley which is an agricultural product. If the Village wants an interpretation that malted grain is not an agricultural product then this needs to be clearly articulated in the Zoning Code.

Mr. Young stated that the Village Board argues that Section 210-41[A] subsection "(28)" of the Code prohibits the craft brewery because it is similar to a distillery. That code says nothing about breweries. Said Section sets forth a permitted use in the B4 District which comprises the following: "Other retail businesses and service uses of similar character, but not including, by way of

example, businesses such as . . ." Said subsection then lists a number of uses which are not allowed *pursuant to Subsection 28*, including distilleries. In other words, the list of uses following the initial sentence of subsection "(28)" comprises uses which are exceptions to subsection 28, *not uses which are generally prohibited under Section 210-41[A]*. This Appeal deals with a determination under subsection 26 of Section 210-41[A]. The Village cannot arbitrarily apply the exceptions to subsection 28 to subsection 26. Moreover, breweries are distinct from distilleries.

Member Vlietstra stated that in reference to Lock 32, his understanding is that Lock 32 does not brew beer on the premises. It was noted that a small amount of beer is brewed at Lock 32. Member Vlietstra stated that the Code has changed since the Village Board originally approved Lock 32. It was a permitted use at that time, but the law changed and that section of code is still in the process of being revised. Ms. Zoghlin stated that the PZBA did not make the decision regarding Lock 32, and it is not in a position to determine whether bars are permitted in the Village. The Board will only render an interpretation based on the application before them. She further stated that it was unfair for Mr. Young to criticize the Planning Board for the delay that took place with respect to the Northfield Common parking lot. That action arose out of a code enforcement action against the property owner, and there were a number of delays that took place with respect to that application that had nothing to do with the Planning Board's actions. Mr. Young stated that he disagrees that the Board had nothing to do with the delays. Member Vlietstra explained that when the Northfield Common application was initiated, none of the current board members were on the Planning Board.

Member Vlietstra questioned Ms. Zoghlin regarding the situation where the language of the Village Code is unclear. Ms. Zoghlin stated that where there is no definition in the Code, one looks for plain language definitions of what the words mean, and if there is ambiguity in the Code, it must be construed and interpreted in favor of the applicant and against the municipality.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to open the public hearing at this time.

**Vote:** Shannon - yes; Vlietstra - yes; Lhota - yes; Stetzer - yes; Bannister - yes. *Motion carried.*

- **Sue Emmel, 6 South Main Street**, stated that there are already a number of establishments in the Village that serve alcohol, I counted 12 establishments. She further stated that in her opinion, another brewery in the Village is neither wanted nor needed. The Village needs other types of businesses.
- **Pearl, 569 Marsh Rd** stated that she is new to the area and enjoys the charm of the Village. She wonders what conditions the Village would want to put on the Brewery.
- **Justin Leitgeb, 6 Stonegate Lane**, stated that he appreciates the work that the Board does. He further stated that he supports the Trustees' appeal of the Building Inspector's decision. Although he would like to have a brewery in the Village, this is about proper Village governance. The fact that the Building Inspector was only in the position for a few weeks is reason enough for the decision to be appealed so it could be reviewed more thoroughly. There is ambiguity in the Village Code and that is why it is being updated. This is an awkward situation: the building inspector made a determination then left and the comprehensive plan and code are being updated. It's an unfortunate situation for the business owner. This Board

has weak tools to ensure that what the Village residents really care about is being respected. That's why all of these updates to the code and comprehensive plan are needed. I think that even with these weak tools we must follow principles of good governance. When Mr. Turner stated that distilleries are prohibited and that should have some bearing on whether we allow beer to be produced. He also pointed out that the case of Lock 32 differs from this application.

- **Betsey Powers, Golf Road**, explained that her family does not drink alcohol, but in her opinion, the brewery should be permitted to operate in Northfield Common. She disagreed with Mr. Turner's assumption that there will be trash and noise and traffic. How does he know that? There is another business that processes agricultural products. Do you see garbage, and noise, and traffic? Why allow one and not the other? It's not right to assume there will be problems. She stated that the Northfield Common area needs businesses. She stated that the Village should not assume that there will be problems with trash, noise, odor, etc.
- **Ann Binstock, 3 Stonegate Lane**, stated that there were two documents in the meeting materials that referred to the New York State Department of Agriculture that seemed to support the applicant's position. She also noted that she attended a Comprehensive Plan Committee meeting where she learned that the earliest the updated plan would be completed is the fall of 2019. The Board should look at the code as it exists with its ambiguity and put aside the debate of whether there are too many bars or too many nail salons. She stated that the brewery proposal appears to conform to the existing Village Code, and that it is unfair to ask the applicants to wait until the revised code is completed. Its not fair for businesses to put forth a good faith application based on the rules in the code that does not prohibit a brewery, only a distillery is prohibited. She asks the Board to decide if it adheres to the current code and regulations and not look to future regulations that are over a year away.
- **Art Pires, 70 State Street**, thanked the Board for the work that they do for the community.

Mr. Pires submitted a comment for the record:

Dear Members:

I respectfully submit that there are questions that need be asked and addressed by the Village Board and entered into the record:

1. What specifically is the business intending to locate in Bldg. G? Is it permitted per the existing Village Code?
2. If regulated by the Ag Dept., what is the specific section and language of the Ag Dept.'s regulations under which the proposed business is defined and permitted?
3. It should be noted on the record that if the applicant is seeking a liquor license, New York State law requires that the applicant submit a liquor license application to the NYSLA, with copy of same to the Village for review and comment.



4. Upon review of the liquor license application, that the Village Board submit to the NYSLA conditional restrictions on the location (precluding outside service or sale), hours for the serving and sale of alcohol, and hours of any music - with consideration of the Health, Safety & Welfare of the multiple State Street residents, whose residents are located between 120 and 320 lineal feet of Bldg. G.

He stated that he appreciates the Board's clearly explaining the process for review of this appeal and the issues involved. He also stated that this type of appeal process is common in municipalities. One municipal body challenging the decision of another is certainly not unique.

Mr. Pires further stated that the Board needs to consider the project's potential impact on the adjacent residential neighborhood, specifically, the neighboring properties along State Street, where the commercial property is contiguous with residential. In this situation, there are eight residential properties where the houses are located within 320 feet from the location of the proposed brewery. A municipality has the right to protect the health, welfare, and safety of the community. He stated that the Village Code isn't necessarily ambiguous, it is outdated. He also commented that the Village is working very hard to update the current Village Code and Comprehensive Plan. In the Building Inspector's determination, the implication is that he is referring to possible future definitions from the New York State Department of Agriculture. He stated that he is not opposed to the brewery, but more information about the specific proposal is needed.

- **John Limbeck, 62 State Street**, stated that he was the Building Inspector for the Village for 2½ years. He further stated that he is appearing before the Board to express his concerns with the proposed brewery at 50 State Street. He explained that his concerns have to deal with control of the process. Mr. Limbeck stated that his property is located on State Street directly adjacent to Northfield Common. He is not opposed to the brewery or the applicant, but he objects to the manner in which the property owner is trying to push this applicant through without the due process of a site plan review.

He stated that Blackwood Management consistently reinforces the fact that they are not good neighbors and they continuously operate in violation of laws and regulations. Two specific examples of their disregard for the immediate neighbors include (1) their dumpsters are always emptied well in advance of the time limits imposed by the Village Code and they directly abut residential properties; and (2)

in direct violation of law, and despite warnings from the County Sheriff's Office, they encourage their employees to operate commercial mowers using the sidewalks on State Street. He further stated the following concerns regarding the proposed brewery: insufficient parking; a new light was just installed that is not dark-sky compliant or shielded; no proposed control over the odors from brewing beer; and possibility of operations to change in the future to add entertainment and outdoor seating. He doesn't think the parking requirements that are established in code and based on the allowable square foot occupancy of all the buildings are being met. These parking calculations need to include all the businesses in Northfield Commons. There are already two other restaurants and bars that are high occupancy establishments: Label 7 and Olives. He believes that the RG&E right of way should not be considered for parking needs. A very large portion of the Northfield Commons parking lot is directly behind his house. He thinks Agriculture and Market Laws encourage the proliferation of agricultural activities and he believes brewing constitutes agricultural processing but he doesn't want to smell it. He is very sensitive to a need for a balance between residential and viable businesses. He stated that because of his concerns about the property owner's disregard for the adjacent residential properties, he strongly opposes this project. Mr. Young has complained about the lengthy approvals for the 50 state street parking lot and he was the Building Inspector at the time. The delay was caused by the applicant restriping the parking lot without appropriate permits and their failure to follow the process for site plan review.

- **Art Pires, State Street**, stated that upon review of the liquor license application, the Village can submit to the NYSLA conditional restrictions on the location, hours for serving and sale of alcohol, and hours of any music, with consideration of the health, safety, and welfare of the multiple State Street residents. These residents' houses are between 120 and 320 linear feet of this building. He is not against brewing but asks that residents' concerns be considered.
- **Maria Rudzinski, Sunset Blvd**, stated that she works with issues related to agricultural processing and deals with specific agricultural zoning issues. Definitions in local codes are very rarely so thorough and completely unambiguous that there is no need for interpretation. Many interpretations and rulings regarding breweries and wineries have to do with land that is in an agricultural district related to active farming operations. This project may or may not have been an allowed use and require a special use permit. There is equivalency with uses such as distilleries, breweries, and wineries, since they are all producing an agricultural product. Agricultural processing traditionally is that first order of what happens when, for example, the wheat is grown and then it is harvested and then it is dried or milled, and there is another step before it reaches its final use. Processing is the next step after the raw product comes out of the ground and the steps that it takes to use it. She has talked to Bob Sommers at NYS Agriculture and Markets who is involved with interpretations of agricultural processing. There is confusion in the record as it relates to food. Brewing beer is similar to baking a cake. Consider a bakery that takes flour, eggs, and milk and turns it into food. A restaurant makes a salad out of agricultural products. That is very different than agricultural processing of a product which is that first stage of

processing the raw product to make it ready to use. It is not true that just because one is using an agricultural product that they are an agricultural processor. A bakery is a bakery, not an agricultural processor. She wants to further pursue conversations with Agriculture and Markets and submit additional information.

- **Dan Keating, 26 Eastview Terrace**, stated that he wants to address the State Street residents, and has respect and empathy for their concerns, and in his view, so do the applicant, landlord, and their counsel. All through this process issues were addressed as to how to make the business a good neighbor: where to place the dumpster, hours of operation, how to minimize noise and odors, and parking concerns. Many of these issues are addressed in the application and are solvable problems. And while the process wasn't completed, these details can be worked out. A certificate of occupancy will not be granted by the current building inspector until these issues are resolved. He stated that he does not want to see the Village deny the next great business proposal. This will stifle blue collar job creation in the Village. He thanked the board for consideration of this matter.
- **Lindsey Graham, 65 State Street**, stated that she wants the Village to prosper. She believes very much in inclusivity. Lots of thoughtful things have been said. She really wants to know what this business is. Is it a restaurant or is it agricultural processing? She doesn't think the arguments here are whether it will be smelly or whether we are against growing new businesses. She is in favor of thriving new businesses but we have to be thoughtful of all the arguments made here tonight.
- **Art Pires, 70 State Street**, stated that it is unusual for a Village Trustee to speak on behalf of an applicant and make commitments. Many municipalities require as part of the site plan approval process that the applicant meet with the neighbors for input and try to work problems out in advance. This is particularly when commercial property is adjacent to residential as is the case here. The bigger issue here is clarity in interpretation of agriculture definitions. This is also about future applications in commercial districts and impacts on the community. Regarding whether it is permitted, not permitted, or subject to a special permit, it's his understanding that if it's not mentioned in the code it is not permitted.

Mr. Young stated that whether or not distilleries are permitted in the Village is irrelevant. Village Code § 210-41, which provides the use regulations for the Canal B-4 District, lists permitted uses, and subsection 26 is "farm markets, produce stands, greenhouses, and processing of agricultural products." And then we get to section 28 which states "Other retail businesses and service uses of similar character, but not including, by way of example, businesses such as:" and one of those businesses is distilleries. We are not looking under subsection 28. There is no prohibition of distilleries that applies to the B-4 district. There is a prohibition on "Other retail businesses and service uses of similar character" where they cannot be a distillery. The distillery discussion is irrelevant. We are not looking at subsection 28 and that is not the provision of code used for the Building Inspector's interpretation. There is commentary in prior Trustees meetings from 2014 when they were discussing a prohibition on distilleries that they were

specifically excluding wineries and breweries from the definition of distilleries. However we are not reviewing subsection 28, we are reviewing subsection 26.

As for the adjacent homeowners, Mr. Young pointed out that the landlord purchased the property in a zoning district that allows businesses. It's not zoned residential. We apply the code as it's written and it's allowed to be used for businesses. There are no special restrictions in the zoning because it is close to residential. If the Village didn't want businesses in this location, then that should be reflected in the Zoning Code. He expects the rules to be enforced as written and be clear; we shouldn't invest in property and then be subject to new rules after the fact. You need to deal with applicants reasonably. This shouldn't have taken so long to get to an understanding of what is allowed. We want to operate a craft brewery and sell it for consumption and sale on site. The fact that the building inspector was only with the Village for a short time is also irrelevant. He reiterated that when the Code is ambiguous, it needs to be construed in favor of the applicant.

- **John Limbeck, 62 State Street**, stated that he doesn't agree with statements that the neighbors' concerns should be minimized. He further stated that he purchased his property knowing that there were businesses located adjacent to his property, and he has not had any problems until the current owner bought Northfield Common. If the landlord was a responsible owner, he would have no concerns with the brewery.
- **Merchant, 50 State Street**, stated that Blackwood Management does not own Northfield Common. They are two separate companies. She further stated that a former Pittsford resident expressed concern with lack of businesses in the area. There used to be gift shops, boutiques, and things to do. Several businesses have closed and we are down to very few businesses in Northfield Commons.
- **Lindsey Graham, 65 State Street**, stated that she wants to see businesses thrive in the Village. She thinks it's not an agricultural use as stated by an expert.
- **Justin Leitgeb, 6 Stonegate Lane**, stated that he didn't suggest waiting for the Comprehensive Plan to be completed. He also stated that he supports strong business growth in the Village and that good governance makes that possible.
- **Maria Powers, 26 Golf Ave**, stated that she agrees with the residents' concerns with a business having an impact on their properties. She also expressed appreciation for the Board's willingness to hear comments from the public regarding this application. She has seen applicants come before boards before and ask for help and then get possibly steered in the wrong direction and that gets expensive for businesses. Businesses in Northfield Commons are struggling and she hopes for a quick resolution.
- **Pearl, 569 Marsh Rd**, stated that this area is a highly rated area to live and one of the reasons for that is microbreweries. If the code were intended to forbid all

alcohol manufacturing then the code would just say that breweries, distilleries, wineries and manufacture of alcohol are prohibited.

Member Vlietstra said he has heard of concerns about noise, odors, lighting, trash collection. He asked the current Building Inspector, Kelly Cline, what issues she takes into consideration when issuing a building permit to a business like this. She stated that if there is no special permit involved, she would consider code requirements as far as whether or not it's going to create odors, etc., as part of the building permit process. Issues such as trash collection and lighting are code enforcement issues. A non-compliant light is a code enforcement action. If there is an issue with garbage, then that is a code enforcement action in regard to the property maintenance codes that we enforce. We have to look at building permit as presented to make a determination in regard to the type of construction. Odors are not permitted so air cleansing may be needed depending on the type of processing. Depending on the processing it may need to evaluate to see if it's hazardous; dust from grain can be combustible and the building needs to accommodate it so it is not a hazardous process.

Member Vlietstra thanked the Building Inspector for explaining the process and hoped that should address some of the neighbors' concerns.

Member Lhota asked Ms. Zoghlin which sources the Board should rely on for definitions of terms. The dictionary and Agriculture and Markets definitions were cited and sound official. Ms. Zoghlin stated that the definitions are from sources that were drafted for different reasons and not to provide guidance as to whether something is a permitted use. It's the Board's job to evaluate the sources based upon the Board's assessment as to how useful they are in interpreting provisions of the Code. Common sense is needed.

Member Vlietstra stated that the Board needs to review the updated plans and written communication between the former building inspector and the applicant. He stated that all the current documentation is available for the public to view on the Village website under today's meeting agenda. Board members discussed holding a special meeting to continue the public hearing on this application. He announced that the special meeting will be held on January 3<sup>rd</sup> 2019 at 7:00 pm.

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**Pittsford Canalside Properties, LLC, 75 Monroe Ave.** ~ Extension of time to complete conditions of final site plan approval

**Present:** Chris DiMarzo; Tom Daniels

**The legal notice was published in the Brighton-Pittsford Post on November 22, 2018:** *"Please take notice that a public hearing will be held before the Village of Pittsford Planning Board at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday December 10, 2018 at 7:00 pm to consider an application made by Pittsford Canalside Properties, LLC, for property located at 75 Monroe for an extension of time to complete Conditions 3 and 20 of Final Site Plan approval."*

Member Vlietstra left the meeting room at this time.

**Discussion:** Mr. Daniels stated that they are before the Board to request an extension of time to complete conditions of final site plan approval for 75 Monroe Avenue. He stated that they would like an opportunity to discuss whether the applicant has satisfied Condition #3 of the final site plan. Board members stated that this item can be added to the January 3<sup>rd</sup> Special Meeting agenda for an informal discussion. He further stated that PCP has been working with Village Green trying to address the drainage issue.

### **RESOLUTION 2018 - 25 Village of Pittsford Zoning Board of Appeals**

At a regular meeting of the Village of Pittsford Zoning Board of Appeals held at the Village Hall on the 10th day of December 2018 at 7:00 p.m. The meeting was called to order by Justin Vlietstra, and upon roll being called, the following were present:

PRESENT:                     Justin Vlietstra  
                                      Susan Lhota  
                                      JoAnne Shannon  
                                      Renee Stetzer  
                                      Eli Bannister  
                                      Mindy L. Zoghlin, Esq., PZBA Attorney

The following resolution was offered by Acting Chair, Susan Lhota, who moved its adoption, and seconded by Board Member Jo Anne Shannon, to wit:

WHEREAS, the Village of Pittsford Zoning Board of Appeals received an application from Pittsford Canalside Properties ("PCP") for an extension of time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing, located at 75 Monroe Avenue, pursuant to Village Code section 210-114(B), and

WHEREAS, on December 14, 2015, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2015 until December 31, 2016, and

WHEREAS, on December 12, 2016, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2015 until December 31, 2017, and

WHEREAS, on December 11, 2017, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2015 until December 31, 2018, and

WHEREAS, on November 14, 2017 the Village of Pittsford adopted a Local Law Imposing a Moratorium on Amendments of the Zoning Code and Map of the Village of Pittsford and the Issuance of Specified Special Permits and Other Approvals Pursuant to and as provided for in the Zoning Code of the Village of Pittsford (the "Moratorium"), and

WHEREAS, PCP'S request for an extension of time is within scope of Moratorium because it requests consideration of site plan approval in an R-5 Residential District under Village Code Article XVII, and

WHEREAS, PCP'S request for an extension of time is excepted from scope of moratorium under section 5(A)(2) because it seeks approval of the same use, intensity, and impact as the existing approval.

NOW THEREFORE, IT IS RESOLVED that PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing is granted because there are no substantial changes in circumstances that would require this Board to deny an extension. The extension shall expire on December 31, 2019.

Justin Vlietstra – abstain  
Jo Anne Shannon – Yes  
Susan Lhota – Yes  
Renee Stetzer – Yes  
Eli Bannister - Yes

**Dated: December 10, 2018**

By order of the Zoning Board of Appeals of the Village of Pittsford

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**Member Vlietstra returned to the meeting.**

**Michael Newcomb, 47 State Street** ~ Use variance  
**Present:** Michael Newcomb, Homeowner

**Discussion:** Chairperson Vlietstra stated that this is a continuation of an open public hearing for a use variance in order to convert the residence at 47 State Street from a single-family home to a two-family residence. He explained that the house is located in the R-3 zoning district, and the code does not permit two-family residences in that district. In order for this conversion to happen, either a use variance is required or rezoning of the district to allow two-family residences.

Member Vlietstra further stated that in evaluating this request for a use variance, the Board needs to consider whether the applicant has demonstrated that there is an unnecessary hardship, whether the hardship is unique or applies to many other properties in the district or neighborhood, whether the action will alter the character of the neighborhood, and whether the hardship is self-created. At

the last meeting, Ms. Zoghlin explained that the applicant will need to provide financial and other documentation in order to prove that he cannot realize a reasonable return on the property as it is currently zoned. As for the hardship being self-created, it was noted that the property may have been previously zoned to allow two-family homes, and the zoning may have changed since Mr. Newcomb purchased the property.

Mr. Newcomb provided some financial documentation, but it was submitted after the board had received the meeting packet. Member Vlietstra requested that Ms. Zoghlin comment on the adequacy of the documentation. She stated that in her opinion, the submitted documentation does not rise to the level required by New York State law's "dollars and cents" proof necessary to establish an inability to realize a reasonable return. Courts have been consistent in finding that a property owner's mere allegations are legally insufficient to establish "dollars and cents" proof. The applicant needs documentation that supports the allegations in his letter stating that he can't realize a reasonable return on his property. He can't merely provide a list of numbers, they need to be backed up with tax returns, property tax statements, copies of rental agreements, receipts, and other hard evidence. She recommended to the Board that the applicant be given additional time to supplement his application and recommended Mr. Newcomb retain an attorney to assist him with the appropriate documentation.

Mr. Newcomb stated that he should be able to prepare his own application.

Mr. Vlietstra stated that Mr. Newcomb is welcome to prepare his application but he is not inclined to approve an application when the Board's attorney stated the submitted materials are not adequate. Mr. Newcomb can talk to the office staff to for assistance in researching whether the zoning laws changed after he purchased the property. He can prepare financial statements or hire an attorney or accountant to assist. Finances and the history of the zoning laws are two critical matters for the Board's determination.

Ms. Zoghlin stated that the burden is on the applicant to demonstrate they qualify for the Use Variance. The Board and Village cannot fill out the application. Mr. Newcomb can't merely drop off a box of receipts for the Board to review.

The public hearing will be left open and this application will be included on the 1/3/19 special meeting agenda.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Stetzer, to adjourn the meeting at 10:30 pm.

**Vote:** Shannon - yes; Vlietstra - yes; Lhota - yes; Stetzer - yes. *Motion carried.*