

**VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS**
Regular Meeting February 25, 2019 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 open the workshop meeting at 6:30 pm.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to close the workshop meeting and call the regular meeting to order at 7:00 pm.

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

The Board announced that 75 Monroe related matters will not be on this meeting's agenda.

Conflict of Interest Disclosure:

- Board members had no conflicts of interests to disclose.

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 to convert the residence at 47 State Street from a single-family home to a two-family residence. 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 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. The applicant needs 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 submitted additional documentation in support of his use variance application.

Member Vlietstra provided a summary of documents that were not provided, based on the following list of requirements for evidence of a hardship.

Dollars and cents proof of hardship requires the following hard evidence:

1. **Purchase price of the parcel in issue.** Not provided; nor has the purchase date been provided.
2. **The present value of the parcel.** The assessed value of \$172,200 is provided but no appraisal was provided.
3. **Expenses attributable to maintenance of the parcel.** Receipts and a sum of expenses were provided.
4. **The amount of taxes on the parcel.** This was provided: \$7680.66 sum total in 2018, plus individual tax receipts that sum to this total.
5. **The amount of mortgages and other encumbrances.** Not provided.
6. **Income from the land in issue.** Not provided - A sum total was provided but no evidence has been submitted such as rental contracts or tax return schedule E.
7. **Other facts relevant to the particular circumstances of the case.** The ZBA has received a narrative from the applicant explaining why a reasonable return cannot be provided, a letter from a realtor explaining an unsuccessful prior attempt to sell the property in 2006, a comparison of revenues and expenses of 47 State with 10 Boughton Ave, expense receipts and tax receipts of 10 Boughton Ave. The ZBA has not received any expert testimony from a realtor, accountant, or other expert witness.
8. **Asking price and other expenses if offered for sale.** A statement from the selling realtor documenting an attempt to sell in 2006 with an asking price of \$179,900 for 2 months then reducing the price \$174,500 for 4 months. The house did not sell in the 6-month interval.
9. **Evidence of the minimum variance required to yield a reasonable return.** Not provided. Conversion to a 2-family home is the minimum possible change.

Other requested documents:

1. Documentary proof they owned the land before the restrictive zoning ordinance went into effect. (Not provided.)

Other use variance criteria:

- **That the hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.** The applicant submitted a written narrative addressing this topic.
- **That the use variance, if granted, will not alter the essential character of the neighborhood.** The applicant submitted a written narrative addressing this topic.
- **That the alleged hardship has not been self-created.** Documentary proof they owned the land before the restrictive zoning ordinance went into effect has not been received.

Member Vlietstra stated that a document summarizing court opinions on “dollars and cents” proof of hardship was provided to the applicant at the November meeting. He further stated that the documents provided did not include a rental contract. There was some discussion as to whether a rental contract was required.

Mr. Newcomb reviewed the summary, and indicated that he would be able to provide an appraisal of the house. He said that the house was purchased in the early 1980’s, and is currently worth more than was paid for it. He also stated that there is no mortgage on the house. He further stated that he contacted the Village a number of times requesting information as to when the Code had changed to restricting this zoning district to single-family residences, and he has not received an answer to this question.

Member Vlietstra stated that the applicant has provided documentation that the property, with its current use, cannot return a profit. The applicant also needs to show that if he were to sell the residence, that he could not return a profit. The applicant stated that based on the price that he bought the house for in the 1980’s, he could most likely return a profit in the current real estate market.

Ms. Zoghlin stated that it will be difficult to establish unnecessary hardship if he is able to return a reasonable profit on the house if he sold it now. It will be for the Zoning Board to determine what is a reasonable return. Ms. Zoghlin also stated that the applicant refers in his application to a number of two-family homes in the neighborhood, and it may be more appropriately discussed at the legislative level in connection with the Village’s reconsideration of the Comprehensive Plan and Zoning Code. Member Lhota stated that the Comprehensive Plan Committee may be open to consider alternatives to traditional single-family residences in the Village.

Mr. Newcomb stated that if he is able to establish the purchase price and date and determine the fair market value, then he might be able to use such information as the inflation rate to determine the return on his investment in the property.

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

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

Art Pires, State Street, asked the Board to state the five criteria for granting a use variance. Member Vlietstra explained the application and criteria the applicant is required to meet. Financial hardship must be demonstrated, the hardship has to be unique to the property and not endemic to the neighborhood, whether the character of the neighborhood will be altered, and whether the hardship is self-created. Mr. Pires pointed out that since there is no mortgage on the property, but it is being rented out, then there is profit from the property. He also questioned how the “reasonable” rate of return is determined in New York State. He reiterated what was stated earlier that it may be more appropriately discussed in connection with the Village’s reconsideration of the Comprehensive Plan and Zoning Code. Mr. Pires stated that to determine if this is a hardship situation, the question is whether the applicant can rent the house at a reasonable rate as a single-family residence or sell the house for a reasonable rate of return.

Member Vlietstra explained that Mr. Newcomb’s application states that between Main Street and the canal, there are five houses on State Street that have not been converted to commercial use, and they have all been converted to two-family homes. Across the street is commercial property. The application further states the 47 State Street is the only property across from commercial property large enough to be a two-family residence that has not been converted to two-family. The proposal is to convert the house to two-family without changing the outside nature of the house. The application further states there are currently other two-family homes in the area, and this proposal will not change the character of the neighborhood. The applicant stated that he has owned the house for over 35 years, the street has gotten much busier during that time, and neighboring houses changed to two-family residences during the time he has owned it. The house has been kept in good condition.

Frank Galusha, 24 Boughton Avenue, stated that regarding the current value of the parcel, the applicant referred to the online service, Zillow, for the appraised value. Zillow does not claim to be an appraisal firm, so the value that they establish is not an official value of the property. With regard to the income from the property, the applicant’s submission does not include copies of any leases. There is no evidence showing that the income as stated is accurate. Regarding the expenses, one document was limited to a page, and there are 250 pages of these. There are also receipts from various suppliers, some identify the subject property, and some identify Newcomb properties and Schoen Place. There are 35 pages of employee timesheets. It is necessary to review all the timesheets to determine what was charged to the property. He further stated that the submitted information does not provide accurate data indicating the income and expenses of the property. The application lacks the information necessary for the Board to make a decision.

Mr. Galusha next stated that the application refers to the “neighborhood,” and the neighborhood, as defined in the application, consists of five properties on State Street. According to the Village zoning map, the neighborhood consists of other streets in the surrounding area in the R3 zoning district, not just the five properties on State Street. In the R3 zoning district, Jackson Park has seven houses, three are rentals, Boughton Avenue

has 28 houses, eight are rentals, and two are two-family residences (28%). Austin Park has 9 houses and 1 is a rental (11%). State Street has five properties, and four are rentals (80%). The purpose of this is to challenge the concept of “neighborhood.” Neighborhoods are important for the Village. He stated that he can provide extensive documentation that indicates that the more rental properties there are in a neighborhood, the value and condition of the property goes down. He cited an article from the October 25, 2015 issue of the Washington Post, which states that too many rental properties in a neighborhood can cause property values to stagnate or drop, causing a deterioration of the neighborhood. It’s about preservation of the character of the Village.

Member Lhota noted that the Washington Post is not Pittsford, New York, and she stated that articles such as those from which Mr. Galusha quoted may or may not be germane to this issue in the Village of Pittsford. Member Lhota said she would be interested in reviewing data on property values locally. Mr. Galusha stated that he only cited one article, but that there are numerous articles supporting his opinion about rental properties and the deterioration of the quality of life in neighborhoods.

Mr. Pires asked whether the applicant had listed the house for sale. Member Vlietstra stated that according to the information submitted, in 2006, Mitchell Pierson Realtors listed the house for sale for six months.

Mike Reynolds, Church Street, stated that Mr. Newcomb is an excellent landlord, and he recommended that the Board try to accommodate his request for a use variance.

Robert Corby, Washington Avenue, stated that he was asked by a resident whether there had been a previous application for this property to subdivide the unit into multiple rental apartments. He questioned whether, if this were true, it would preclude reconsideration of the same application. Ms. Zoghlin stated that generally, the resubmission of the same application is precluded within a one-year time period.

Mr. Corby stated that the 2002 Comprehensive Plan committee conducted an inventory of the ratio of rental properties and single-family homes, and found that there was a healthy balance between rentals and owners. The inventory recognized the fragility of the Village neighborhoods, especially on the arterial streets. At the committee’s recommendation, in the 2003, the Village Board removed the option of subdividing existing single-family residences into multiple-family rental property.

Member Vlietstra stated that based on Mr. Corby’s statement, there are indications that the Zoning Code was changed after Mr. Newcomb purchased the property. However, the applicant still needs to provide the purchase date and price of the house. Ms. Zoghlin stated that there are questions about some of the financial information that was provided. For example, one question is whether the management overhead was paid to a third party. Mr. Newcomb stated that he called various management companies and got estimates as to what they would charge to manage residential properties. She also asked if any of the expenses that were paid were to close family members. Mr. Newcomb stated that they were not. As for the applicant’s tax returns, Mr. Newcomb stated that this is

done as one lump-sum for all the properties, so the tax returns would not provide any additional information to document income and expenses for this property.

Mike Reynolds, Church Street, stated that there are ways to determine what properties rent for per square foot. Ms. Zoghlin stated that the Board isn't going to do an independent analysis of these facts. They will apply the facts that have been provided to them to the law, and make a determination when the record is complete.

Member Vlietstra stated that going forward, the applicant will need to provide the purchase price and date, whether the house can be sold for a profit, and the Board will hear any additional comments from the public.

Mr. Newcomb asked whether an appraisal would be beneficial. Board members indicated that they have the assessed value of the house and some Zillow estimates of value and felt this information is satisfactory for now.

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to continue the public hearing at the next regular meeting to be held on March 18, 2019.

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

The Board next reviewed the findings resolution for the decision on the 50 State Street appeal from the Building Inspector's determination and made some minor revisions to the resolution.

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to approve Resolution 2019-2.

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

Resolution 2019-2 VILLAGE OF PITTSFORD ZONING BOARD OF APPEALS

RESOLUTION – DECISION ON APPEAL FROM BUILDING INSPECTOR DETERMINATION

Appellant Name: Village of Pittsford Board of Trustees
Applicant Name: Hawley Brewing Company
Address: 50 State Street, Building G
Pittsford, NY 14534
Action: Appeal from Building Inspector Determination of September 28, 2018

At a special meeting of the Village of Pittsford Zoning Board of Appeals held at the Village Hall on the 3rd day of January 2019 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
Jo Anne Shannon
Renee Stetzer
Eli Bannister
Mindy L. Zoghlin, Esq., PZBA Attorney

The following resolution was offered by Chair Justin Vlietstra, who moved its adoption, and seconded by Board Member Susan Lhota, to wit:

WHEREAS, the Village of Pittsford Zoning Board of Appeals received an appeal from the Village of Pittsford Board of Trustees seeking to challenge a determination of the Village of Pittsford Building Inspector dated September 28, 2018 with respect to whether Hawley Brewing Company’s proposed use of 50 State Street, Building G was permitted as of right in a B-4 zoning district pursuant to Village Code 210-113.B(1) (the “Appeal”), and

WHEREAS, The Board makes the following findings regarding review requirements for this action:

1. State Environmental Quality Review (SEQR): The Board’s review is for an interpretation of an existing code, rule or regulation and is a Type II action that is not subject to SEQRA Review pursuant to 6 NYCRR 617.5(c)(37).
2. Monroe County Planning Review: The Board’s review is for an interpretation that is exempt from Monroe County Planning review pursuant to General Municipal Law section 239-m and an Agreement between Monroe County and the Village of Pittsford dated January 11, 1994.
3. Waterfront Consistency Review: The proposed action is a Type II action under SEQR so it is not subject to a Waterfront Consistency Review.

WHEREAS, Village Code 210-113.B(1) gives the ZBA all the powers and duties granted by statute and by the Zoning Code, including the power to decide any question involving the interpretation of any provision of the Zoning Code, and

WHEREAS, NY Village Law 7-712-b(1) provides that the ZBA may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make such decision as in its opinion ought to have been made ... and to that end shall have all the powers of the administrative official from whose order, decision, or determination the appeal is taken, and

WHEREAS, the ZBA has conducted a public hearing and considered the following documents regarding the Appeal:

Application to ZBA dated 11/12/2018;

Notice of Appeal dated 11/7/2018;

Amended Notice of Appeal dated November 21, 2018 with Exhibits A- G:

A: Email from Building Inspector to D. Young, J. Turner and R. Colby dated 9/28/2018;

B: Letter from Building Inspector to Blackwood Management dated 9/11/2018;

C: NYS Department of Agriculture and Markets Frequently Asked Q & A Regarding Farm, Breweries, Farm Wineries and Farm Distilleries;

D: Guideline for Review of Local Laws Affecting Farm Operations Which Produce, Prepare and Market Crops for Beer, Wine, Cider and Distilled Spirits;

E: Printout Regarding the “Malting Process” from <http://www.greatwesternmalting.com/gwm/malting-process/>

F: “Harvesting to Drying to Processing Methods Overview” Power Point from “HOPS”;

G: Printout from the New York State Farm Brewers Association regarding definition of “Farm Brewery” from <https://newyorkcraftbeer.com/farm-brewery/>;

Email chain from D. Young to Building Inspector et al dated 12/12/2018;

Email from Building Inspector to D. Young, J. Turner and R. Colby dated 9/28/2018;

Email chain between B. Somers and Building Inspector dated 9/28/2018;

Email from J. Vlietstra to R. Corby dated 10/1/2018;

Emails forwarded from Building Inspector to Village Clerk dated 9/11/2018 re: determination re. classification of Use for Proposed Brewery Concept;

Letter from Building Inspector to Blackwood Management dated 9/11/2018;

Definition of “agricultural product” from
https://definedterm.com/agricultural_product;

“Legal to do List for Starting a Brewery” from
<https://newyorkcraftbeer.com/2015/11/legal-to-do-list-for-starting-brewery-in-ney-york/>.

Distilled Spirits Memorandum of Understanding between the Bureau of
Alcohol, Tobacco and Firearms and the Food and Drug Administration
dated 10/2/1974;

Letter from Phillips Lytle dated July 2, 2018 with Exhibits A-H:

A: Area/Zoning Map

B: Special Permit application to Board of Trustees

C: Proposed Menu

D: Site Plans

E: Petition of Support from Supporting Businesses

F: SEQRA SEAF

G: Landowner authorization form

H: site survey

Letter from Boylan Code to ZBA dated 10/10/2018;

Special Permit Application to Board of Trustees dated 7/6/2018 with
attachments A1 – A5:

A1:proposed interior design of Hawley Brewing Company

A2:Site plan

A3:Building Section drawing of Building G

A4:Roof framing plan, floor plan and truss profiles

A5:standardized Notice form (NYS Liquor Authority Form 49)

Letter from NYS Department of Agriculture and Markets to Migliori Farm dated 5/25/2017;

Letter from NYS Department of Agriculture and Markets to Mary Jordan dated 10/21/2013;

Letter from NYS Department of Agriculture and Markets to Tuthill Town Spirits Farm dated 9/11/2009;

Village of Pittsford Zoning Code 210-26;

Excerpts from the Village of Pittsford Board of Trustees meeting of 9/11/2018;

Undated email from Building Inspector to J. Turner with cc to R. Corby;

Email from R. Stetzer to Mayor Corby et al dated 7/10/2018 regarding Northfield Commons request for administrative relief from the moratorium;

Letter from Arthur Pires to Village of Pittsford Board of Trustees dated 10/23/2018;

Email Chain from Justin Vlietstra to PZBA Recording Secretary dated 12/8/2018;

Letter from Brook and Austin Fossey dated 12/9/2018;

Letter from Boylan Code to ZBA dated 12/10/2018

Email Chain from Justin Vlietstra to PZBA Recoding Secretary dated 12/12/2018;

Letter from Osborn, Reed to ZBA dated 12/17/2018 with North American Industry Classification System dated 2017;

Letter from Osborn, Reed to ZBA dated 12/20/2018;

Letter from Boylan Code to ZBA dated 12/17/2018 with demolition, foundation and floor plan

Letter from Boylan Code to ZBA dated 12/21/2018 with Exhibits A-

A: Affidavit of Bryan Meyer with EX A: Application of Bryan Meyer to Village of Pittsford for a Special Permit dated 7/27/2017 and EX B: Email from J. Turner to D. Young and M. Zoghlin dated 9/10/2018

Email chain from Kelly Cline to PZBA dated 1/2/2019;

Email from D. Young to L. Habeeb dated 1/3/2019 with building elevation and floor plan

And

WHEREAS, Village of Pittsford Code 210-41(A)(26) permits as a principal use “Farm markets, produce stands, greenhouses, and processing of agricultural products” as of right in the B-4 (Canal Waterfront Business) Zoning District, and

WHEREAS, the term “processing of agricultural products” is not defined in the Village of Pittsford Zoning Code, and

WHEREAS, New York state law requires the ZBA to construe any ambiguity in favor of the applicant and against the municipality pursuant to *Matter of Allen v. Adami*, 39 NY2d 275 (1976); *Falco Realty v. Town of Poughkeepsie ZBA*, 40 AD3d 635 (2d Dept. 2007); *Saratoga County Economic Opp. Council v. Village of Ballston Spa*, 112 AD3d 1035 (3rd Dept. 2013), and

WHEREAS, Merriam-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 being produced; and

WHEREAS, the processing of beer includes malting, milling, mashing, lautering, boiling, fermenting, and sometimes filtering, and bottling and selling beer, and

WHEREAS, malt, grains, and hops are agricultural products, and

WHEREAS, after review, the ZBA has made the following findings:

1. The applicant’s proposed use (the “Proposed Nanobrewery”) involves the following:
 - a. brewhouse that is approximately 12’11” x 16’4”, consisting of
 - i. 5 x 116.25-gallon fermenting tanks;
 - ii. 1x 8-gallon insulated chiller tank;
 - iii. 2 reverse osmosis tanks;

- iv. 1 hot liquor tank;
 - v. 1 mash tun; and
 - vi. 1 boil kettle.
- b. 6'9" x 14'6" walk-in cooler;
 - c. 18'5" tasting table with 8 stools;
 - d. Two tables with 4 chairs each;
 - e. No full kitchen. There will be a sink for washing dishes and cleaning up, but not for food preparation.
 - f. No physical alteration of the building exterior;
 - g. No outside seating;
 - h. No dance floor; and
 - i. No live music; and
 - j. All beer sold shall be produced on-site; and

WHEREAS, the Proposed Nanobrewery's hours of operation would be Weekdays: 2 pm to 10 pm; Friday – Saturday: 2 pm – 11 pm; Sunday: 2 pm – 9 pm, and

WHEREAS, the applicant (by letter dated 12/10/2018) has represented that the proposed use involves brewing beer, conducting tastings, and selling beer at retail for on- or off-site consumption, and

WHEREAS, the ZBA heard public comments concerning possible odors, noise and waste associated with a brewery operation and finds that it is for the Building Inspector, not the ZBA, to determine whether the proposed use would comply with section 210-42(A), which prohibits uses that “may become hazardous, obnoxious or offensive owing to emission of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matter or water-carried waste.”

NOW, THEREFORE, BE IT RESOLVED, the Board finds the Zoning Code definition of “processing of agricultural products” in Village Code 210-41(26) is ambiguous; and it is further

RESOLVED, that this Board shall construe the ambiguity in the Village Zoning Code in favor of the applicant and against the municipality, and it is further

RESOLVED, the Proposed Nanobrewery (as defined above) is permitted as of right in a B-4 district under 210-41(26) because it constitutes “processing of agricultural products” since (1) the materials used to brew beer are “agricultural” and (2) brewing is a “process,” and it is further

RESOLVED, that this determination is limited to the particular facts and circumstances set forth in this appeal, and is not be broadly construed as permitting in the B-4 Zoning District every use which involves any kind of brewing.

The question of the foregoing resolution was duly put to vote as follows:

Justin Vlietstra	Yes
Renee Stetzer	Yes
Eli Bannister	No
Susan Lhota	Yes
JoAnne Shannon	Yes

Dated: January 3, 2019

Minutes:

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to approve the 1/28/19 meeting minutes, as drafted.

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

The Board discussed the Zoning Code updates before the Trustees. Mayor Corby invited the Planning Board to attend a Trustee meeting to discuss proposed changes.

The Board discussed procuring estimates from consultants for 2019. Members agreed to request updated contracts from a landscape architect and a lighting engineer for consulting services.