

ZONING BOARD OF ADJUSTMENT
May 7, 2013

APPROVED:

7/2/13__jrl_____

AGENDA: VARIANCE, 13VAR01: RALPH JON SHACKETT, Lake Street,
#113-045

ATTENDING: Alan DeStefano (Chairman), Richard LaFlamme (Vice Chairman),
Lorraine Bohmiller, Larry Denton

ABSENT: Ashley Dolloff (excused)

OTHER: Michael Capone (Town Administrator), public

The meeting opened at 6:01pm.

MINUTES OF APRIL 2, 2013:

R. LaFlamme made a motion, second by L. Bohmiller, to approve the minutes as read.
The motion carried.

13VAR01, VARIANCE: RALPH JON SHACKETT

The secretary read the application, the list of notified abutters, stated where the variance was advertised and said that there were no phone calls or written messages regarding this case. There were comments from the Water and the Health Departments.

Mr. DeStefano explained that the Board is one member short and asked the applicant if he would prefer to wait for a full board. Mr. Shackett answered that he would like to proceed. Mr. DeStefano then stated that Jon Shackett's brother Jeff is a client of his though there is no affiliation with this particular property. There were no objections to having Mr. DeStefano remain on the board.

Mr. Shackett explained that he would like to open a nano brewery in the lower level of Jeff Shackett's building on Lake Street (below the Buck'nUp store and beauty parlor. A nano brewery is one that makes less than 2,000 barrels of beer in a year. It would take Mr. Shackett 10 years to make that amount, he stated. He would like to sell 22oz. bottles through Jeff's store and hold tastings and some sales at the Lake St. location. He would sell 32 oz. glass jars. He averages 25 barrels a year and, if he expands, it would probably be no more than 50 barrels.

SHACKETT VARIANCE continued:

Mr. Denton asked how much a barrel holds and Mr. Shackett answered 31 gallons. Mr. Denton then asked if he will just sell through Jeff's store and was told that he can go to other stores, as well. Mr. Denton asked if he has to get other permissions and Mr. Shackett stated that he would need State licensing and a Federal brewing permit. If this is allowed, he might be able to get open for August but it will probably be June of 2014.

Ms. Bohmiller asked about growlers and would they be at Jeff's store, as well. Mr. Shackett stated that to sell two types in stores is not allowed but he could possibly do so at his establishment.

A discussion followed in trying to determine what classification a nano brewery falls under. If he sold pizza as well, he would be considered a brewpub and it would be allowed as a restaurant. He will have retail sales but it seems to be manufacturing. Mr. DeStefano pointed out that manufacturing is not allowed in this district. He then asked where the location would be. Mr. Shackett explained that it would be in the basement which is now storage. The public access would be at the main ground level and Mr. Shackett pointed out the bulkhead walk-in that was pictured and stated that there are stairs that go to the basement. The area is 48' x 36', he said. The remainder of the basement would remain for Jeff's storage. Mr. Shackett asked the process for a Variance and Mr. DeStefano explained the steps.

Mr. Shackett was then asked to address the 5 steps for a Variance and he proceeded:

1. Public Interest – The proposed brewery will benefit the public by offering a local option. Mr. Shackett feels that the intent was to eliminate heavy manufacturing in this district and his operation is basically cooking. There is no noise or pollution.
2. Spirit of the Ordinance – Nano brewing was not in existence when the ordinance was written. The State separates liquor from beer and the manufacture of liquor is prohibited in this type of area by them.
3. Substantial Justice – Businesses exist that sell liquor and beer in this district. The manufacture of beer has a low impact.
4. Diminution of Value to Surrounding Properties - Values would improve because what is now an unattractive storage space would be a well-maintained seasonal business. A liquor store shares the parking lot so the addition of a nano brewery with aspirations to brew a relatively small amount would not diminish the surrounding property values. A business would enhance this Downtown Commercial area.

SHACKETT VARIANCE, 5 VARIANCE POINTS continued:

5. Unnecessary Hardship – Beer, not liquor, would be served. The wastes are organic not industrial. The process is quiet and inoffensive. It will improve, not degrade, the area. There are already several retailers of beer in the district. A brewpub would be allowed and that would have far greater impact than the proposed use. It was unlikely that the ordinance was written to prohibit this low impact activity.

Mr. DeStefano then asked if there are any public comments in favor of this application. There was no response. He asked if there are any in opposition and again there was no response.

Ms. Bohmiller asked if he was in operation at this time and Mr. Shackett stated that he does this in his garage at home but he would prefer Bristol's water. Ms. Bohmiller then asked if there is any odor. Mr. Shackett stated that there is but he will vent it. He finds the odor to be pleasant and similar to a bread baking facility. Mr. Denton asked where the vent would be placed and was told that it could be at the side or in back but Mr. Shackett would prefer it on the side and situated over the 15 gallon brew barrels. Mr. Denton was not sure that the neighbor businesses would like this.

Mr. DeStefano stated that, if he is to manufacture and sell, where the selling would be. Mr. Shackett pointed out a wall that would be a half wall so that patrons could see the operation as well as to purchase and taste. Mr. DeStefano asked why 22 oz. bottles and was told that 22 oz. bottles are the primary choice for beer brewers right now. It is the market trend. In some breweries, the customer buys the bottle and comes back for a refill. The brewer cleans the bottle and refills it for a cost. Mr. Shackett would be the only employee. It takes 3 weeks to a few months to age. He would start in the Spring for summer sales and be open Friday, Saturday, and Sunday for a couple of hours.

Mr. DeStefano asked about price differences. Mr. Shackett stated that the best bargain is \$12.00 for a ½ gallon growler bottle. The State separates liquor from beer by the alcohol content (over 6% and under 6%). Mr. Shackett added that when he went to the Planning Board for a PCC, they could not find anything that a nano brewery fit under beyond manufacturing. They told him that he could wait another year for them to define it and get it into the ordinance or come to Zoning for a Variance.

With all questions having been asked, Mr. DeStefano summed up the application as a beer manufacturing facility with some retail sales on location and wholesale to stores. There would be no sit down area. At this time he closed to hearing for the Board to deliberate.

SHACKETT VARIANCE, DELIBERATION:

1. Public Interest – Mr. Denton felt that he would grant this as a local option. Ms. Bohmiller and Mr. LaFlamme were okay with this point.
2. Spirit of the Ordinance – Mr. LaFlamme stated that he does not feel that this meets the Spirit. The part of retail sales does but not the manufacturing of the product. Mr. Denton mentioned that it does allow restaurants here. Mr. LaFlamme answered that the restaurants create but this is manufacturing of a product. Mr. DeStefano agreed. A comparison was made to Pat's Pizzeria and the Old Mill Fudge. Mr. Denton stated that Mr. Shackett is just cooking beer. It would be light manufacturing. Mr. Denton then asked if he could have Mr. Shackett explain the process.

Mr. Shackett explained that you add barley to hot water then grind it in a roller mill. You then raise the temperature of the water, depending on the type of beer (115 degrees to 160 degrees). Next a tank of water drips over it to wash out the starch. It is then added to a new pot where it boils for an hour. Hops are added and then it is chilled to 68 degrees. It then goes into another vessel for 2 weeks to a month. From there it is moved to kegs which can be sold on tap or put in bottles.

Mr. Denton felt that it would be similar to a bread bakery. Mr. LaFlamme stated that when the ordinance was written, nano breweries were not heard of.

3. Substantial Justice – Mr. DeStefano was having a hard time with this one. Mr. Denton stated that it would be creating another business downtown and it is light manufacturing more like doing bread. Mr. DeStefano stated that retail sales are allowed.
4. Values to Surrounding Properties – It was generally felt that this is a commercial zone and it would fit.
5. Hardship – The Zoning Board felt that this is the toughest point to determine. Mr. Denton stated that if he asked for a brewpub, Mr. Shackett would not have had to come here. Mr. DeStefano asked if there is any danger of exploding vessels and was told that there is not. Mr. DeStefano stated that it is a question of whether the property could be used for something else. It is hard to see where it is a hardship. All agreed though they felt that the only hardship is that a nano brewery is not listed. A discussion followed comparing it to a bakery.

SHACKETT VARIANCE, DELIBERATIONS continued:

At this point, Mr. DeStefano read the comments from the town departments:

Water/Sewer – more details would be needed as Mr. Shackett gets further along in the process, such as flow characteristics, product used and process.

Health – Health Officer would need to inspect prior to any opening. More information would be needed as to sterilization of bottles or glasses, sanitary storage of ingredients and finished products. The overall “box” (floors, walls, and ceiling) would need to be reviewed for issues of splash/contamination potential.

At this time, the Board took a vote on each point:

1. = Okay
2. = 1 for, 2 against
3. = Okay
4. = Okay
5. = 0 for, 3 against

Overall decision = 0 for, 3 against. Mr. DeStefano declared that the Variance was denied and that there is a 30-day appeal period. He then signed the Notice of Decision and thanked the applicant for coming in.

COMMUNICATIONS:

There were two notices that were e-mailed earlier to the Board as they had gone by at this time. The May/June Town & City magazine will be in the office.

UNFINISHES BUSINESS:

A reminder was given of the forum for Planners and Developers to be held May 23rd, registration date of May 16th, to be held at the Plymouth Library from 6:30 – 8:00 pm.

NEW BUSINESS: -----

NEXT MEETING: The next ZBA meeting is June 4, 2013 at 6:00 p.m. There are no applications yet but applicants have until Friday noon, May 10th to apply.

With no other business before the Board, R. LaFlamme made a motion, second by L. Denton, to adjourn at 7:00 p.m.

Respectfully submitted,
Jan Laferriere, recording secretary