

PLANNING BOARD HOFFNAGLE PUBLIC HEARING, March 22, 2023 AT 7:00 PM

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Members present: Robin Severance, Alan Hipps, Chris Maron, Mary Lou Fitzgerald, Elisha Bartlett, Ken White, Robert King (Arrived at 7:15), and Daniel Berheide (alternate).

Guests Present: George Hainer, Keith Hoffnagle, Matthew Brankman, Catherine Simmer, Jean Kirejczyk, Patricia French, MaryJane Viens, Steven Viens, Cynthia Ford-Johnston, David Johnston, Taylor Haskins, Josh Kingzack, Rose Chancler, Michael Tyler (son), Samuel Sherman (phone), Dorinda Sherman (phone), Joseph Trincerì.

Chairwoman Robin Severance: Opened the Hoffnagle Public Hearing at 7:10 p.m.

Ken White: Recused himself due to the fact he is a neighboring property of this special permit request.

Chairwoman Robin Severance: Read aloud the public hearing notice: **NOTICE IS HEREBY GIVEN** that the Planning Board of the Town of Westport, Essex County, New York, will hold a Public Hearing at the Town Hall, 22 Champlain Ave, Westport, New York on March 22, 2023 at 7:00 p.m. The hearing will address the following project: The Keith Hoffnagle, special permit for light manufacturing of beer and cider in rear section of the former Westport Fire District building, 38 Champlain Ave., Tax Map #66.58-2-31.000. At said public hearing, the Planning Board will hear all persons interested in the subject matter thereof.

Chairwoman Robin Severance: Invited the guest to introduce themselves.

Chris Maron: Do we have a quorum without Mr. White and Mr. King?

Chairwoman Robin Severance: Yes, we have five sitting members and a quorum is four sitting members.

Chairwoman Robin Severance: Invited Mr. Brankman and Mr. Hoffnagle to describe the special permit project.

Narrative: Matthew Brankman presented his plan for the space. I intend to brew 90-100 gallons at a time, which is 500 barrels per year or 1500 gallons a year. This would require me to brew 2 days per week. I have no intention of ever having a retail or wholesale business out of this space. Brewing is an 8-hour process that creates steam that will create a barley and yeast smell, basically barley soup. That process takes about 2 hours, then the soup is chilled and put into the fermenter. It takes about 3-6 weeks to ferment depending on what I am brewing. Once it's ready I then put the finished product into kegs. In preparing for this hearing, I spoke to a colleague, Chris Ericson, owner of Lake Placid Brewery. His manufacturing facility is also in a residential area. He informed me that there has never been any problems or complaints from the neighbors. They are a much larger operation. I intend to be a good neighbor and do everything I possibly can to keep everyone happy. It would be really sad if the building doesn't get used. I really hope we can work this out.

Chairwoman Robin Severance: Matthew, can you please explain to us about the waste.

Matthew Brankman: The wastewater created from the brewing process is equivalent to that of a family of six. I use lye to return the wastewater to neutral before sending it to the town's wastewater treatment

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facility. Each batch also creates waste grain and spent hops that goes to compost. It does not hang around, it either goes to a local farm or my garden. The square footage of the space would prevent me from doing anything more than brewing 500 barrels per year. I am looking to double my current production which is 100- 200 barrels.

Elisha Bartlett: Will there be employees? Please tell us about deliveries. Will there be large trucks making deliveries?

Matthew Brankman: I will need the help of employees to get the equipment into place, which will take a couple of days. Once everything is set up it will just be me. I receive grain deliveries once a month. Hops and other supplies are delivered by FedEx. The size of the delivery truck depends, they usually use a smaller truck, especially when they know it is coming to Westport.

Chairwoman Robin Severance: We are going to open up for public comment.

Jean Kirejczyk: I have concerns for safety and the environment.

Matthew Brankman: The process uses the same heating element as a household hot water heater. Lye is the most caustic substance used. It is used to neutralize the waste water. It is more of a danger to myself and employees. The tanks are held at 15 psi. We are currently brewing in the basement apartment of a bakery.

Jean Kirejczyk: It's an old building and I was worried about the electrical.

Matthew Brankman: The building must be up to code and must have stamped plans.

Rose Chancler: I have a difficult time with noise, as I have very sensitive hearing and I spend a lot of time in my yard. Will there be any noise involved?

Matthew Brankman: There will be an exhaust fan running for the two hours that I am brewing once or twice a week. It will be out the back of the building. I doubt you will be able to hear it. I have lots of wiggle room as to when I can brew. I am a school principal, so Monday through Friday from 8 am to 4 pm, I am unavailable to brew.

Rose Chancler: Does it exhaust gases?

Matthew Brankman: No, I reclaim as much of the gas as I possibly can because I would need to pay for the gas otherwise. It gives off CO₂ and alcohol. Steam is what is being exhausted from the building.

Rose Chancler: If there is noise, will you be willing to work with us since Jean and I are so close to the building?

Matthew Brankman: Yes. I have a sincere desire to be a good neighbor.

Rose Chancler: If there is a problem, do we have any recourse?

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Matthew Brankman: I will do everything in my power to resolve any issues that arise. I'm thinking of the five senses.

Rose Chancler: What is the status of the entire building?

Keith Hoffnagle: There will be no more manufacturing. Right now it is undecided.

Rose Chancler: I guess this is a question for the board or George. If this goes ahead, what is the status?

George Hainer: This would be a legal non-conforming use. Our Local Law of 2011 allowed for the Planning Board through special permit to allow for a use that is equal to or comparable to the previous use. Each additional use would be on a case by case basis. If the use has been discontinued for one year, it must go back to the conforming use, which is residential. I have always gone off the sale date to start the one-year clock. The Decker Garage sold in May 2009, which meant it needed to be used with a acceptable non-conforming use by May 2010. When Westover came to the Planning Board in 2011 the Town said no, but the APA said yes. The Town has a one-year non-conforming use and the APA has a five-year. There is a special change clause for the Fire House and The former Funeral Home. The Fire House sold in August 2022, therefore, Mr. Hoffnagle has until August 2023 to come to the Planning Board with a comparable non-conforming use. Currently the Mormon Church sold in September 2022 the buyer has until September 2023, but will either have to keep the use as a church or comply with allowed uses. This is the precedence I have always gone by with non-conforming use buildings.

Ken White: Anything Keith wants to do needs to come back to the Planning Board and go through the same process.

Rose Chancler: So, the light manufacturing door is open?

George Hainer: There is a time frame.

Dorinda Sherman via phone: Thank you Keith. I'm sorry you have been misled.

Samuel Sherman via phone: Please read the letter from our attorney. In August, 2021 the Fire Commissioners decided to sell. August 25, 2021 the new Fire House/ new facility was occupied and the fire district abandoned the building. Therefore, the building was no longer being used as a Fire House. October 19, 2021 the ballot approved a December election to sell surplus property; December 14, 2021 agreed to sell; May 17, 2022 the Board put the building up for sale; August 10, 2022 the building sold. This mean the new owner had until August 25, 2022 to come to the Board with a non-conforming use. The year was up on August 25, 2022 when the new facility became occupied. The property must revert back to the original district use which is residential. This application is dated March 15, 2023. Light manufacturing is not a conforming use.

Keith Hoffnagle: Well if that is the case, the Fire District just took things out of the property two weeks ago, so they technically were still using the space until two weeks ago.

Matthew Brankman: If this wasn't the reason, would you support the project otherwise?

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Samuel Sherman via phone: We are not supporting the project.

Matthew Brankman: So, you don't have any other concerns.

Samuel Sherman: The project is irrelevant. The Zoning Law says no. The application should not have been accepted. The whole process should not have been started.

Matthew Brankman: Do you have any concerns?

Dorinda Sherman via phone: All concerns are irrelevant.

Matthew Brankman: I don't believe you don't have any other concerns.

Samuel Sherman via phone: There is nothing I can say about that.

Chairwoman Robin Severance: This is not without options. This is a grey area. The word "discontinued" in our law needs to be defined. "Discontinued" use does not have a timeline. That is what Sam is referring to. The Planning Board cannot define what the word "discontinued" means. We will need to refer to the Zoning Board of Appeals to have them interpret the law. The Zoning Board can interpret that law more in depth because they don't have a definition either.

George Hainer: The precedent has been set.

Cynthia Ford-Johnston: We all bought our homes with the Fire House there. It was rowdy and we survived. This request is quiet. We are completely in favor of this project. Past practice and precedence has been set.

Dave Johnston: Lead, follow or get out of the way. Matthew would never do anything that would adversely affect the neighborhood. To pretend this is a legal nuance?

Cynthia Ford-Johnston: This is a pivotal time for growth.

Chairwoman Robin Severance: Read aloud the letter from Norfolk Beier, Attorneys at Law, dated March 22, 2023. Please see the attached letter. We need to remember this is not a brewery, it is light manufacturing we were very specific. Thank you Sam for sending us the letter.

MaryJane Viens: Abandoned building? Keith said they just took stuff out of the building two weeks ago.

George Hainer: The siren is still there.

Samuel Sherman via phone: They left on the 25th, so it was abandoned.

Daniel Berheide: You said the ZBA?

Chairwoman Robin Severance: The Planning Board cannot make that determination.

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George Hainer: An Article 78 can be filed and if approved, then the court will decide, instead of the Zoning Board of Appeals.

Chris Maron: Can someone apply for light manufacturing in Village Residential II?

Mary Lou Fitzgerald: The public makes statements; this is not a discussion.

Chris Maron: We need to move on.

Alan Hipps: We can adjourn and not conclude the public hearing. We can reconvene the public hearing once we have a determination from the Zoning Board of appeals.

Alan Hipps: We have past practice and we need a clear statement about “discontinuance”.

Chairwoman Robin Severance: We will adjourn the public hearing with comment (referral) to the Zoning Board of Appeals.

Chris Maron: I move we approve the project.

Alan Hipps: Regular meeting, not now.

Chairwoman Robin Severance: Adjourn the Hoffnagle public hearing at 8:02 pm.

Respectfully submitted,

Catherine L. Simmer, Secretary



March 22, 2023

Via Email and First Class Mail

Robin Severance, Chairwoman
Town of Westport Planning Board
22 Champlain Avenue
P.O. Box 465
Westport, NY 12993

RE: Keith Hoffnagle Permit Application

Dear Chairwoman Severance and Planning Board Members:

We represent Samuel and Derinda Sherman who live within close proximity of the location of the property that is the subject of an application by Keith Hoffnagle to obtain a special permit for a light manufacturing operation, namely construction and operation of a brewery. We are writing on their behalf and behalf of Dr. Edward and Patricia French, Bernadette Brennan, Nancy Hunter and Carol Smith, all of who also live in close proximity of said location that is subject to Mr. Hoffnagle's special permit application. All of those identified above oppose Mr. Hoffnagle's application.

It is our understanding that the Planning Board is considering this application pursuant to Section 4.013 of the Land Use Law of the Town of Westport (the "Land Use Law"). We respectfully contend that the application cannot be properly granted pursuant to this Section, as discussed below.

Section 4.012 of the Land Use Law states that "If a non-conforming use is discontinued for a period in excess of one year, further use of the property shall conform to this local law." The prior non-conforming use of the property as a former firehouse has been discontinued for a period in excess of one year. Accordingly, the property now needs to conform with the provisions of the Land Use Law, which does not allow light manufacturing, which is a non-conforming use.

Section 4.013 of the Land Use Law does not allow the Planning Board to grant a permit for the proposed new non-conforming use in that this Section is prefaced by the phrase "if a non-conforming use is replaced by another use..." There is no current non-conforming use of the property to be replaced since the prior one was discontinued for a period in excess of one year. Section 4.013 further states that the Planning Board may grant a special permit for a new non-conforming use that is "less non-conforming and/or will be more compatible than the existing non-conforming use." There is no existing non-conforming use here, the prior one having been discontinued for a period in excess of one year.

Robin Severance, Chairwoman
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Since under Section 4.013 there is no existing non-conforming use, it cannot be “replaced” as contemplated by Section 4.013. Any reading of the Land Use Law that would allow the current permit to be granted pursuant to Section 4.013 requires a strained and inappropriate interpretation on this Section by in effect holding that any property that at any time in the past had a non-conforming use, no matter how long ago it was discontinued, may have a special permit issued for a new non-conforming use. This clearly is not what is contemplated by Section 4.013 as evidenced by its requirement that any special permit for a new non-conforming use must be a replacement for an existing non-conforming use, not one that has been discontinued for a period in excess of one year.

For the reasons stated above, we request that Mr. Hoffnagle’s application for a special permit be denied.

Sincerely,

Norfolk Beier PLLC

A handwritten signature in black ink, appearing to read "M. Norfolk", with a horizontal line extending to the right.

By:

Matthew D. Norfolk, Esq.

MDN:mbm