

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: SEPTEMBER 18, 2013

CASE NO.: 9/18/2013-2

APPLICANT: PATRIOT PARK INDUSTRIAL CONDO
12 LIBERTY DRIVE
LONDONDERRY, NH, 03053

LOCATION: 12 LIBERTY DRIVE, UNITES 7 AND 8; 16-60C-007 AND 6-008, I-II

BOARD MEMBERS PRESENT: NEIL DUNN, ACTING CHAIR
LARRY O'SULLIVAN, ACTING CLERK
JAMES TOTTEN, VOTING ALTERNATE
JACQUELINE BENARD, NON-VOTING ALTERNATE

REQUEST: VARIANCE TO ALLOW RETAIL SALES AS AN ACCESSORY USE WHERE
RETAIL USES ARE NOT PERMITTED IN THE INDUSTRIAL-II ZONE IN
ACCORDANCE WITH SECTION 2.2, TABLE OF USES.

RESENTATION: Case No. 9/18/2013-2 was read into the record with one previous case listed. The Clerk also read Exhibit "A" into the record; a letter of support from an abutter.

NEIL DUNN: And who will be presenting?

DANIEL LEONARD: Good evening! My name is Dan Leonard and this is my business partner Geoff Hewes from the 603 Brewery. I do have a few...handouts and copy's for everyone.

NEIL DUNN: Ok before go though I want to let you know that again you, the board is usually compressed of 5 members, we only have 3 voting members here tonight so you have to get all 3 of our votes. So you have an option to continue to next month where we will have more. You have a better chance with 5 voting members.

DANIEL LEONARD: We understand but with the time sensitive nature of what we are trying to accomplish we would like to move forward night.

NEIL DUNN: Okay thank you...go ahead...

DANIEL LEONARD: These are just a few letters of recommendation [see Exhibit "B"].

LARRY O'SULLIVAN: So you're Dan?

DANIEL LEONARD: Yes.

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47 LARRY O’SULLIVAN: Dan, could you give us a little nutshell of what you are trying to accomplish.

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49 DANIEL LEONARD: Yep...yes...I actually have a prepared statement. Is it okay if I read that?

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51 NEIL DUNN: Sure.

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53 LARRY O’SULLIVAN: Sure.

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55 DANIEL LEONARD: As I stated my name is Dan and this is Geoff. We are the operators of the 603
56 Brewery...before I go on I would like to thank Cynthia May, Jaye Trottier and Richard Canuel and Stewart
57 Arnett, the towns contracting, economic development person. They’ve all been very helpful as we’ve been
58 trying to deal with the town searching for a new home. As I go through my presentation please feel free to
59 stop me and ask me any questions. Just to give you a brief background of us. The 603 Brewery was founded in
60 2012 as home brewers who met studying engineering in college. We enjoyed designing high quality hand
61 crafted beer which as demand from friends and family, continued to escalate over the past year. The vision to
62 launch a micro-brewery was developed. Our mission to be a community centered craft brewery is in high
63 quality ingredients to make our beer has taken off. We started selling beer in 2013, February, and have
64 already outgrown our existing space. In searching for a new home we want to first and foremost to be in a
65 community that will support us as much as we want to support them. My business partner, Geoff’s,
66 interactions with the towns interjected proactive planning and economically developed staff will be
67 demonstrated to us that Londonderry was the place to be. We have received a warm welcome from our
68 neighbors as you can see from the letters of recommendation we brought with us, which you probably don’t
69 need to read...so we are here today to request variance to allow retail sales at the Brewery as an accessory
70 use to our primary manufacturing functions. Our business naturally draws interest from our community and
71 craft beer fans. People enjoy visiting brewery’s in general to see the process of how beer is made and we
72 welcome that. We are requesting to gain the ability to have a retail component as part of our Brewery as an
73 accessory use so that those very same people who make the effort to come and see us can purchase a freshly
74 bottled beer and a souvenir such as a hat, t-shirt or glass. State law allows us to offer a 4 ounce sample of beer
75 to those of age who visit the brewery but prohibits the consumption of any beer purchase at the brewery. It
76 also does not allow and alcohol to be brought to the Brewery and consume there. We are not asking for any
77 modifications to those rules and we stand by the judiciously...The retail portion of business will only be
78 conducted on limited weekday afternoons after 3 PM on some weekdays and Saturday and Sunday days, no
79 night. The Variances will not be contrary to public interest in that the intended primary use to the business
80 which is like manufacturing is consistent with the districts fine objections. The related retail sales component
81 of the business constitutes less than 5% of the sales of our business. It is conducted on a limited basis. The
82 spirit of the ordinance is observed because the primary use still meets the districts objective as the business’s
83 primary function is the manufacturing and distribution of beer. Substantial justice is done and at the primary
84 use meets the districts intent that this area used as a manufacturing location and the incidental retail function
85 is a necessary component to the manufacturing and distribution of our product. The information gained from
86 interacting with our customers is an important driver to the design of our product. The values of surrounding
87 properties are not diminished. There is no change to the exterior of the building or the surrounding
88 neighborhood. A retail sales component will have an impact to the neighborhood...will not have an impact to
89 the neighborhood because it’s such a small portion of what we do. The realty portion of the business will only
90 be conducted again on limited basis. Some week days after 3 PM and on weekend days. In fact we think our

91 retail use will have far less impact than the previous tenants use who wholesaled HVAC parts...of it during
92 regular business hours. Strict application of the zoning ordinance will not allow a retail sales business in an
93 industrial 2 zone, but that is not what we are. The brewery is a light manufacturing and distribution business
94 with a retail component incidental to our primary use. The accessory retail portion of the business is
95 commonly found at breweries to enable interaction with both potential commercial and noncommercial
96 customers. Our hardship resides in that the referenced ordinance table with Section 2.2 does not permit any
97 accessory use that aren't listed as uses for that district. Without the ability to have accessory uses, typical to
98 the nature of the primary use it would be very difficult to conduct our business. For example: in an agricultural
99 zone it wouldn't be permitted to sell, for example...I'm sorry...a farmer in an agricultural zone would not be
100 permitted to sell his pumpkins because while his primary function is being a farm in an agricultural zone the
101 logical accessory retail component of selling his pumpkins is prohibited per this use table. While our
102 manufacturing of beer is acceptable in Industrial II, we need this variance to sell you a beer for offsite
103 consumption and a t-shirt when you come to visit the brewery. The manufacturing of our product drives the
104 logical accessory use, because without the manufacturing of the product, retail portion of the business would
105 cease to exist. Additionally the accessory retail function is what really helps tie our business to the community.
106 We want to residents to come meet us and see what we are doing. We want them to take pride in every
107 bottle of beer that we will make, it will be proudly advertised and proudly brewed in Londonderry, NH. We
108 respectfully request your consideration for a variance. This time I would like to answer any questions.

109
110 NEIL DUNN: Go ahead, anybody?

111
112 LARRY O'SULLIVAN: What are the retail uses? That's really what it's about right? To make all the beer you
113 want you just can't have the public coming in and buying stuff on a retail basis.

114
115 DANIEL LEONARD: Right.

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117 LARRY O'SULLIVAN: Okay so the stuff that they would be buying is what?

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119 DANIEL LEONARD: ...We'll have, you can actually buy the beer that we bottle there and you can also buy
120 souvenirs and things like that. Gift shop type items.

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122 LARRY O'SULLIVAN: Okay so is the retail sale of beer the issue or the souvenir?

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124 DANIEL LEONARD: Retail in general. Retail of anything.

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126 LARRY O'SULLIVAN: I guess what I am trying to differentiate is between....the limitation that we have...Richard
127 I guess it's your interpretation that the retail sale part of this is the no-go part.

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129 RICHARD CANUEL: Oh you know our ordinance doesn't differentiate...as you know our table uses if it's not
130 listed as a community use than it's not listed. So simply because it says retail sales it's not allowed in the
131 industrial 2 zone that's the reason for the variance. Now the board needs to determine whether the retail
132 sales of this particular use is incidental enough...that it doesn't necessarily change the nature of the
133 manufacturing use. And a...this is strictly you know, accessory or incidental to that kind of use.

135 NEIL DUNN: And if I may Richard, that would be the same for an orchard or a very well put farmer trying to set
136 up a new...well...
137
138 [Laughter]
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140 RICHARD CANUEL: Yeah agriculture is not a good reference because they are allowed to do...retail sales of
141 their products.
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143 LARRY O’SULLIVAN: They’re not manufactured...
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145 NEIL DUNN: Using the table to the applicants point, the table is not saying a retail sale is not allowed in that
146 AR-I.
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148 RICHARD CANUEL: That’s true.
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150 NEIL DUNN: Is that defined somewhere under agricultural...
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152 RICHARD CANUEL: Yeah under agricultural.
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154 RICHARD CANUEL: Yes.
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156 LARRY O’SULLIVAN: Absolutely...[joke].
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158 NEIL DUNN: Okay just checking because you know it’s a valid point if you look at the table retail sales is not
159 allowed in AR1.
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161 JAME TOTTEN: What is your primary avenue for selling t-shirts, glasses, would this be the primary way or
162 would you also sell them online?
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164 DANIEL LEONARD: No, this is, purely this is for people who take the time to come and visit the brewery. The
165 retail sales component is, is not a driver of our business but we want to be able to offer something to people
166 who take the time to come. We don’t offer these items anywhere; we don’t offer them online or anywhere
167 else.
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169 LARRY O’SULLIVAN: I see why this could be an issue because this could be a whole can of worms if we allow
170 retail sales without any restrictions in an industrial zone. Industrial II is that what this is?
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172 DANIEL LEONARD: And we’d be happy to accept the restrictions that you put in there...you know people who
173 will be coming to visit us, we don’t want them there during our operating day...that’s why we do this at the
174 end of the day, so this is off hours compared to regular operations, the main work day, people won’t be
175 coming in for this purpose.
176
177 JAMES TOTTEN: Is this like organized tours? Specific set times?
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179 DANIEL LEONARD: Yup there will be...will, you know, set times. And people are going to be arriving there to do
180 that anyway, that's a no cost item so those trips are generated essentially already. It's just whether or not
181 once they're there if they want a t-shirt on their way out the door.

182
183 LARRY O'SULLIVAN: But no food, this isn't...yeah.

184
185 DANIEL LEONARD: Nope it's...the laws are very strict. You get a 4 ounce sample that's it and if you buy a beer
186 on site you cannot crack it and it and open it and drink it there, it's not a bar.

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188 LARRY O'SULLIVAM: It's not a refrigerated drink?

189
190 DANIEL LEONARD: No.

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192 NEIL DUNN: Anything else from the board?

193
194 [No comments]

195
196 NEIL DUNN: Anybody in the audience who would like to speak opposed? Anybody who wants to speak in favor
197 or has any questions? So none, back to the board.

198
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200 LARRY O'SULLIVAN: When you sell the beer do you sell it by the bottle or the case or a keg or...?

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202 DANIEL LEONARD: Right now we sell 22 ounce bottle. We intend to be able to sell a keg.

203
204 NEIL DUNN: And for those who don't know that's a large liquor gallon jug.

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206 DANIEL LEONARD: It's just a more cost effective...way about it.

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208 JACKIE BERNARD: So let me ask you right now do you do basically wholesale distributing?

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210 DANIEL LEONARD: Our current business that we've grown out of has been the can and we do this...this
211 currently. Saturday afternoons right now. People come in and they do a quick tour and they do some tasting we
212 have just a smaller gift shop with some t-shirts and a glass. Our current distribution and future is the one and
213 only NH. We are the 603 Brewery for fairly targeted...we are just in stores right now and we will be moving to
214 bards and restaurants fairly soon, but all that is done through a distributor.

215
216 JACKIE BERNARD: Okay, thank you.

217
218 LARRY O'SULLIVAN: So you'll be doing all your manufacturing there?

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220 DANIEL LEONARD: Yes.

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222 LARRY O'SULLIVAN: You' be doing your shipping from there.

223

224 DANIEL LEONARD: Correct.
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226 LARRY O’SULLIVAN: And you won’t do any of those things manufacture or should one have these retail sales
227 hours.
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229 DANIEL LEONARD: Correct, yes.
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231 NEIL DUNN: Well I think if it’s brewed in vat is that manufacturing?
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233 LARRY O’SULLIVAN: Yeah.
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235 DANIEL LEONARD: Just for safety purposes we don’t let people around the equipment; the equipment won’t
236 be in operation during the retail sales portion.
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238 NEIL DUNN: Okay.
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240 DANIEL LEONARD:...but if there was anything going on after they...the public sections very courted off we have
241 maybe 10% of the floor plan. It’s just basically right when you walk in.
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243 LARRY O’SULLIVAN: Have you visited the Moonlight Meadery?
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245 DANIEL LEONARD: Yes.
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247 LARRY O’SULLIVAN: [Makes joke].
248
249 [Laughter]
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251 LARRY O’SULLIVAN: Just teasing.
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253 NEIL DUNN: Anything else?
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255 JAMES TOTTEN: No, sir.
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257 DELIBERATIONS:
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259 NEIL DUNN: Thoughts?
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261 LARRY O’SULLIVAN: Since it’s the variances, go through the 5 points. First of all thank you for your
262 presentation, again and again I pointed out the retail sales part of this is an accessory. I can’t imagine
263 sunglasses, hats and what have you, t-shirts being a significant part of the business but at the same time the
264 issue is going to be as far as I’m concerned monitoring this or making sure that...you know that the...we don’t
265 have a real brewery we have the meadery in town but not a brewery in town. I would think that despite the
266 fact that this is an industrial zone this commercial use, this combination of manufacturing/ retail would be a fit
267 primarily because limited hours...next there is no intrusion near anybody nearby, it’s an industrial zone so we
268 don’t have any of the same issues with site and smell although I do like the smell [laughter] and at the same

269 time you get...the 5 points of the issues I want to make sure we cover so that everyone feels comfortable
270 getting those 5 points of law. Do you have any issues Neil?

271
272 NEIL DUNN: No I thought it was well presented and to the point where you can have whole sale distributes in
273 there people going in and out all day it doesn't look a whole lot different from retail. It's not contrasted public
274 interest because it is a...the majority of the business is what is allowed, 5% on accessory sales. The spirit of the
275 ordinance is a...you know the districts objectives. There are other businesses that probably see just as much
276 traffic. The justice is done because it meets the primary use meets the district in areas allowed manufacturing
277 location. No complaints I see no impact on surrounding values...and the unnecessary hardship...the principle
278 business is allowed there, so to deny that principle business and the accessory thing would to the point of
279 other business who probably have more foot traffic. So I'm good with that.

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281 JAMES TOTTEN: Likewise.

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283 NEIL DUNN: Jackie would like to say anything?

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285 JACKIE BERNARD: No.

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287 LARRY O'SULLIVAN: Okay so I am comfortable with it having matched the 5 points. The issue is going to be the
288 restrictions. They say 5% retail and then 5% going to be the distribution through the wholesale. : So again this
289 is something we can't monitor and opening up a can of worms in the industrial zone and retail location opens
290 up a can of worms but if we put the restriction on it that the 5% maximum and that is a self-policing type of
291 thing that they will than become aware we are not going to be having parties and at taste test parties,
292 bachelorette and bachelor type parties.

293
294 JAMES TOTTEN: that's not allowed for a whole host of other reasons. So what are you saying 5% from in hours
295 of operation?

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297 LARRY O'SULLIVAN: They said themselves 95% of the total...I'm sorry...5% of the total sales of the business is
298 related to the retail sales component of the business, that's the thing we are talking about that forces them
299 into this variance to begin with. It's less than 5% of the sales of the total business.

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301 NEIL DUNN: And that is something that can be monitored? And then the restriction on the hours as they told
302 us after 3 and only on Saturday and Sunday kind of limits.

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304 LARRY O'SULLIVAN: That's what their presentation was so we can just approve that as presented.

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306 NEIL DUNN: I'm concerned with them going over the 5% and that it would be too busy for that zone.

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308 LARRY O'SULLIVAN: They would have to move out of the industrial zone. They have to move to retail out of
309 that...

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311 JACKIE BERNARD: The retail part takes off...

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313 [Overlapping comments]

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LARRY O’SULLIVAN: That’s when you open the restaurant that goes along with it and serve those great big burgers [laughter] okay so enough said...anybody else? I don’t want to be the only one.

JAMES TOTTEN: We all chimed in.

LARRY O’SULLIVAN: We’re ready than, you ready?

JAMES TOTTEN: This one’s you.

[Laughter]

LARRY O’SULLIVAN: Okay I’d like to make a motion to approve 9-18-2913-2 as presented regarding the hardship requirements, that they’re in business...I’m sorry the retail portion of their business be considerably less than the...I’m sorry we have to be more specific...they used 5%, I’d like to use 5%...should constitute less than 5% of the total sales of the business. And that’s the only restriction because they presented that they wouldn’t be doing anything privately and limited hours and days. Any clarifications?

NEIL DUNN: I’m good.

JAMES TOTTEN: I’ll second.

NEIL DUNN: All those in favor?

LARRY O’SULLIVAN: Aye.

JAMES TOTTEN: Aye.

NEIL DUNN: Aye...Those opposed?

[None]

RESULT: THE MOTION TO GRANT CASE NO. 9/18/2013-1 WITH RESTRICTITONS WAS APPROVED, 3-0-0.

RESPECTFULLY SUBMITTED,



LARRY O’SULLIVAN ACTING, CLERK

TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

APPROVED NOVEMBER 20, 2013 WITH A MOTION MADE BY JAMES TOTTEN, SECONDED BY JACKIE BENARD AND APPROVED 3-0-1 (JIM SMITH ABSTAINED AS HE HAD NOT ATTENDED THE MEETING).