

**WEST SENECA TOWN OFFICES**  
1250 Union Road  
West Seneca, NY 14224

**WEST SENECA PLANNING BOARD**  
**Minutes #2017-06**  
**June 8, 2017**

Chairman Robert Niederpruem called the meeting to order at 7:00 P.M. followed by the Pledge of Allegiance led by Sergeant-at-Arms Joseph Sherman.

**ROLL CALL:** Present - Robert Niederpruem Jr., Chairman  
Donald Mendola  
Jim Rathmann  
Joseph Sherman  
George Clifford  
Margaret Bebak  
Dale J McCabe  
Jeffrey Schieber, Code Enforcement Officer  
John J Fenz, Town Attorney  
Absent - None

Chairman Niederpruem read the Fire Prevention Code instructing the public where to exit in case of a fire or other emergency.

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### **APPROVAL OF PROOFS OF PUBLICATION**

Motion by Sherman, seconded by Rathmann, to receive and file the proofs of publication and posting of legal notice.

Ayes: All

Noes: None

Motion Carried

### **APPROVAL OF MINUTES**

Motion by Sherman, seconded by Mendola, to approve Minutes #2017-05 of May 11, 2017.

Ayes: All

Noes: None

Motion Carried

### **OLD BUSINESS COMMUNICATIONS**

#### **SPR2017-04**

A request from Slade Potters, LLC for site plan approval for property located at 162 Slade Avenue for a three story mixed use building (commercial, office & multi-family residential)

Chairman Niederpruem advised the applicant requested this item be tabled until the July meeting.

Motion by Bebak, seconded by Mendola, to table this item until the July meeting.

Ayes: All

Noes: None

Motion Carried

**2017-07**

A request from Rusty Nickel Brewing Company for a special permit for property located at 4350 Seneca Street, being part of Lot No. 59, changing its classification from C-2 to C-2(S), for service of alcoholic beverages.

Motion by Mendola, seconded by Rathmann, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

David Johnson of Rusty Nickel Brewing Company stated the business has been operating at 4350 Seneca Street for over two years. They were recently told they needed a special permit for service of alcoholic beverages and will do what is necessary to be in conformance. At the last Zoning Board meeting, a variance was approved for the outdoor patio conditioned upon screening on one side and this work has been completed.

Chairman Niederpruem commented on the parking situation and stated although calculations were submitted the Planning Board members have concerns because they see what occurs on a regular basis.

Mr. Mendola also commented that parking on Seneca Street creates additional problems and a dangerous situation in the winter when there is snow on the road.

Jason Havens stated they do not control the parking or the site. The Ebenezer Ale House owns the entire parcel; they only lease the building so they have no option to do anything.

Mr. McCabe commented the parking lot is full on weekends and people are parking along Seneca Street. He questioned if there is any solution to the problem.

Mr. Johnson responded they can only work with the land they have.

Mr. Sherman recited from the Rusty Nickel's original Zoning Board application that stated "The micro-brewery is only expecting light volumes of traffic from patrons wishing to purchase on site, which is not expected to exceed three vehicles per hour. Duration of patron visits typically last less than 10 minutes. Hours of operation would likely be Wednesday – Friday 5 – 9 P.M. and Saturday 10 – 4 P.M." Mr. Sherman understood the hours of operation are now Monday – Friday, 5 P.M. until midnight; Saturday 12 P.M. to 12:30 A.M. and Sunday noon to 9 P.M.

**2017-07** (continued)

Mr. Havens stated the hours were as recited, but farm brewery laws keep changing and the business has evolved. They are now open to retail sales on premises and NYS has encouraged this. The operating hours are now Monday – Friday, 5 P.M. with last call at 11 P.M.; Saturday, noon with last call at 11:30 P.M. and Sunday, noon with last call at 9 P.M.

Mr. McCabe stated the hours of operation could be a stipulation of the special permit and he questioned if they would agree to being held to the hours as stated.

Mr. Havens responded they would not want to be held to those hours as they sometimes have groups that rent the location for business meetings. The meetings are not always held within that timeframe, so to accommodate that he stated the hours would range from 8 A.M. until midnight every day.

Mr. Sherman commented the business hours directly translate to the number of vehicles going in and out of the parking lot. He understood the business is evolving, but stated they need a clearer definition of how it is expanding and how it will affect the parking situation.

Mr. Havens stated the volume of traffic will not increase between 5 P.M. and midnight because they cannot physically have more than the maximum occupancy they currently have. If their hours are extended earlier than 5 P.M., he did not see a problem since the Ebenezer Ale House never has a full parking lot until 4 P.M. and it is never more than half full for lunch time.

Code Enforcement Officer Jeffrey Schieber stated the Town Code is most restrictive and requires two parking spaces for every five seats. The Ebenezer Ale House with 145 occupants requires 58 parking spaces. The Rusty Nickel with 90 occupants requires 36 spaces. There are 94 parking spaces on the plan submitted and it meets the Town Code for occupancy.

Chairman Niederpruem questioned if the occupancy includes the Ebenezer Ale House's patio which is quite large. Mr. Schieber responded he was not certain on the Ebenezer Ale House patio, but the Rusty Nickel building and patio allows 90 occupants.

Mr. Mendola commented on special events that are held that complicate the situation even more. He did not believe that sharing a parking lot was working.

Mr. Johnson stated they have talked to the Ebenezer Ale House owners about restriping the parking lot which would help in parking vehicles the correct way. He further noted when special events are held people do park elsewhere, such as the post office which allows parking after hours.

**2017-07** (continued)

Mr. Clifford questioned if any of the neighbors that spoke at the last meeting had approached Mr. Johnson or Mr. Havens regarding their concerns on the patio and fires.

Mr. Havens responded they had heard from the neighbors at the Zoning Board meeting and have rectified the screening by installing a wall. They also installed enclosed fire pits. They will have outdoor music for a maximum of four special events. Two events have been planned and they have been approached by New York State to host an event. They have to participate with Ebenezer Ale House events because of the shared parking lot.

Mr. Sherman questioned if the Rusty Nickel is permitted to sell all types of alcohol.

Mr. Havens responded they are allowed to sell hard alcohol in the form of spirits and liquors, wines, ciders and beer. If it is not grown or manufactured and then produced in NYS they cannot sell it (i.e. tequila). Mr. Havens added they are not a party bar or shot bar. They are an education first group and a unique production center. They are the only one currently in Erie County and one of only three in WNY.

Mr. McCabe questioned if they can apply for a regular liquor license and if the special permit will be granted solely for what is allowed under the farm brewery.

Mr. Havens responded they could apply for a regular liquor license but there is no advantage at this point and it would take away from their intentions. Going forward, under farm brewery laws, in addition to the current location they have the opportunity for having five retail outlets that may be more of a bar. If they utilize that law and then limit themselves to not having a liquor license, they could handcuff themselves because all shipments would come to this location and then be moved to the other locations.

Mr. Clifford commented the brewery in Hamburg has propane based fires and he questioned if they had considered that type of fireplace. Mr. Havens responded propane also produces smoke and gases, but they have considered this.

Katie Brown questioned if complaints from the neighbors are about the fire pit or cigarette smoke. Mr. Clifford responded the complaints were expressed by neighbors at the last Planning Board meeting and they were about smoke from the fire pit.

Motion by Sherman, seconded by Mendola, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

**2017-07** (continued)

Motion by Mendola to recommend denial of the request for a special permit for property located at 4350 Seneca Street for service of alcoholic beverages as it is detrimental to the safety, health and welfare of the residents.

Motion by Sherman, seconded by Clifford, to recommend approval of the request for a special permit for property located at 4350 Seneca Street, being part of Lot No. 59, changing its classification from C-2 to C-2(S), for service of alcoholic beverages, noting the parking is in compliance with Town Codes, but certain care needs to be taken to address public safety and it is recommended the parking lot be striped in accordance with Town Code.

Ayes: (6) Mr. Sherman, Mr. Clifford, Mr. Rathmann, Mrs. Bebak, Mr. McCabe, Chairman Niederpruem

Noes: (1) Mr. Mendola

Motion Carried


**ADJOURNMENT**

Motion by Sherman, seconded by Rathmann, to adjourn the meeting at 7:40 P.M.

Ayes: All

Noes: None

Motion Carried

  
**JACQUELINE A FELSER**  
**TOWN CLERK/PLANNING BOARD**  
**SECRETARY**