



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

July 17, 2018

By Hand
Ed Ramsdell, Chair
Zoning Board of Appeals
City of Newburyport
City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950

Re: Variance and Special Permit for Use;
79 Parker Street, Newburyport, MA (the "Property");
Assessor's Map: 78 Lot 3
ADDITIONAL INFORMATION II

Dear Chair and Members of the Board;

Reference is made to the above-captioned matter and the initial hearing of the Board last month. In that connection, the Board requested more information and a clarification of certain items presented that evening. Below, I have set forth those matters. Additionally, however, given the discussion at the meeting, the Architects and Engineers have again reviewed the seating and parking spaces and the Applicant has reviewed the uses at the site. Based upon that review several changes have occurred with regard to seating, parking and use limitations.

The Barn: The Board requested a further clarification on the use of the Barn as a function facility. Further, there seemed to be some concern related to the "restaurant use" designation. To that end, the Applicant is removing the request for a variance for the restaurant use (Use 501) from its request. To avoid any doubt, the Applicant proposes to host special events and private functions in the Barn building. Such events may include entertainment and the service of food. That use can be accomplished by the granting of a variance for entertainment (Use 407), and meeting-space/function-hall (Use 421) as limited in the proposed conditions below. Such events would be by reservation or appointment only and not held on a regular daily basis¹. A commercial kitchen will be a part of the Barn solely for the purpose of a caterer storing and preparing to serve food. The kitchen will not be used for "cooking" food. The Barn and adjacent outdoor space designated for outdoor events will be limited to 125 seats, in or out, or any combination thereof. Further, the Brewery will not be permitted to hold an outdoor event if the Barn is being used for an event. That is, if an event is being hosted at the Barn, either in or out, the Brewery will not be permitted to hold an outdoor event at the same time. This restriction does not apply to the seasonal outdoor seating immediately adjacent to the Brewery for normal day-to-day taproom use.

Given the proposed use of the Barn it is foreseen that the most likely weekday

¹ In order to assure ample parking, the shared parking arrangement reflects a calculation for parking based upon the more restrictive restaurant use rather than "entertainment" use.

uses would be for corporate and business events while the weekend uses would most likely be special occasions such as small weddings or other celebratory events.

The brewery taproom will be limited to a maximum of 175 seats, including both inside and outside. If the Brewery is hosting an outdoor event it will be limited to an additional 125 seats (those not being used at the Barn) in the designated outdoor event seating area. In total, the parking spaces required, if you construe the parking requirement to be the same as a restaurant for the Barn, is 75. There are 68 in the immediate area and the Applicant is providing 40 additional spaces. The total required parking would be 104 if the office were open, the brewery manufacturing, the Tap Room at full capacity and the Barn hosting a function. The Applicant is providing 108 spaces. Specifically, 79 and 79A Parker Street include 84 spaces and an additional 24 spaces are provided on the adjacent property at 77 Parker Street for a total of 108 available parking spaces.

With the foregoing in mind and in response to comments from the Board, I have attached hereto a draft lease for the parking at 77 Parker Street. I have also attached a copy of a sample menu to be served in the taproom of the light manufacturing building. Below I have modified the conditions previously provided to the Board to reflect the comments of the Board and the public at the last meeting.

1. Office Building:

- 1.1. Rehabilitation of the existing farmhouse and renovation of its addition shall comply with design recommendations of the Newburyport Historic Commission. (The Historic Commission approved the design presented at their June 27th meeting).

2. Industrial Building:

- 2.1. The accessory retail use (in the case of the brewery - promotional items, t-shirts, keychains, hats, etc.) shall be located within the Industrial Building, may be accessory to any industrial use, and shall not exceed 250 sf in floor area.
- 2.2. The accessory taproom/restaurant footprint (including kitchen, restrooms, bar and stage), shall be located within the Industrial Building, shall be accessory solely to production, and no other use, and shall not exceed 3,500 sf in floor area.
- 2.3. Only alcoholic beverages produced by the tenant in the light industrial building shall be served in conjunction at the accessory taproom.
- 2.4. Live entertainment may be performed solely as an incidental part of the accessory taproom and adjacent outdoor spaces, and not as a separate accessory entertainment/club use.
- 2.5. The accessory taproom shall be limited to occupancy as set by the state building and fire code and shall include no more than 135 indoor seats with 40 adjacent seasonal outdoor seats. , Service shall be limited to actual serving hours not extending beyond 10:30 p.m. and shall include no more than 175 seats in total including a combination of seasonal outdoor seating of which a maximum of 135 seats applies to indoor seating. The outdoor seating area shall be contiguous to the Taproom for seasonal use only.
- 2.6. The Tap Room may not host an outdoor event or outdoor live entertainment if there is an event occurring either inside or outside at the Barn.
- 2.7. The entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges or video game arcades.
- 2.8. The designated outdoor event space may not be used by the Brewery if the Barn is operating a function in the outdoor space.
- 2.9. The Tap Room will include messaging and signage that stipulates NO PARKING on Parker Street.
- 2.10 Employees of the Tap Room, Industrial Building and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.

3. Meeting Space/ Function Facility / Barn:

- 3.1. The principal meeting space use shall be limited to occupancy in accordance with the state building and fire code and shall include no more than 125 seats indoors and 125 outdoors in the designated seating area for outdoor events. At no time may the total combined indoor and outdoor seating exceed 125 seats. The designated outdoor event space will not be used by the Brewery if the Barn is hosting a function, be it inside or outside.
- 3.2. The principal meeting space use shall be limited to the hours of 8:00 am to 12:00 am, with a last service call of 10:30 p.m., regardless of day.
- 3.3. The uses granted in the Barn and incorporated support facilities are limited to special occasion and/or business or corporate events. Food service and operations shall not include daily restaurant use nor table service typical of a sit-down restaurant.
- 3.4. Live entertainment may be performed solely as an incidental part of the principal meeting space use and are allowed in the designated outdoor event space.
- 3.5. The entertainment use variance shall be limited only to live entertainment and shall specifically not include membership clubs, lodges or video game arcades.
- 3.6. All events will include messaging and signage that stipulates NO PARKING on Parker Street.
- 3.7. Employees of the Barn and any hired contractors shall be instructed to park off-premises at 77 Parker Street during planned outdoor events.

4. Entire Site:

- 4.1. Shared parking shall be no fewer than 68 spaces on the immediate Property, or 84 spaces if you include the abutting parcel known as 79A ($68 + 16 = 84$). An additional 24 parking spaces shall be provided on 77 Parker Street for a total of 108 spaces ($84 + 24 = 108$).
- 4.2. The Petitioner shall provide and confirm over-flow parking on 79A and 77 Parker Street as evidenced by a lease agreement, a form of which is a part of this submission, which in substantially the same form shall be provided to the Building Commissioner prior to the issuance of a certificate of occupancy for the brewery building on the Property.
- 4.3. No final occupancy permit shall issue for the brewery until either 1. A pathway is constructed across the Property accessing the leased parking at 79A and 77 Parker Street or 2. A sidewalk is constructed from the Property entrance to the leased parking at 79A and 77 Parker Street.

We hope this clarifies the request before the Board and look forward to discussing it with you next week.

Respectfully submitted,
Plum Island LLC
by its Attorney



Lisa L. Mead

cc: Client

LEASE AGREEMENT

1. PARTIES

Plum Island LLC, LESSOR, which expression shall include its heirs, successors, and assigns where the context so admits, does hereby lease to _____, LESSEE, which expression shall include their successors, executors, administrators, and assigns where the context so admits, the following described premises:
2. PREMISES

A certain portion of the land located at 77 Parker Street, Newburyport MA 01950 as shown on Exhibit A attached hereto and incorporated herein by reference shown as "Parking Area".

together with the right to use in common, with others the right to pass and repass into and out of the Parking Area (the "Premises").
3. TERM

The term of this lease shall be for _____ commencing on _____ and ending on _____.
4. RENT

The LESSEE shall pay to the LESSOR the amount of \$ _____ payable in advance in monthly installments of \$ _____, subject to proration in the case of any partial calendar month, commencing _____, 2019.
All rent shall be payable without offset or deduction except as provided herein.
5. SECURITY DEPOSIT

Upon the execution of this Agreement, the LESSEE shall pay to the LESSOR the amount of **\$0** dollars, which shall be held for the LESSEE's performance as herein provided, without interest, subject to the LESSEE's satisfactory compliance with the conditions hereof. No interest shall be paid on said sum or any part thereof.
6. UTILITIES

There shall be no utility payments required.
7. USE OF LEASED PREMISES

The LESSEE shall use the Premises only for the purpose of parking for the users of the facilities located at 79 and 79A Parker Street and for no other purposes.

All waste and refuse will be removed from the Premise by LESSEE. The Premises will be kept attractive in appearance and appealing to the public.

There shall be NO overnight parking.
8. COMPLIANCE WITH LAWS

The LESSEE acknowledges that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any law or any municipal by-law or ordinance in force in the city or town in which the Premises are situated. Without limiting the generality of the foregoing (a) the LESSEE shall not bring or permit to be brought or kept in or on the Premises or elsewhere on the LESSOR's property any hazardous, toxic, inflammable, combustible or explosive fluid, material, chemical or substance, including without limitation any item defined as hazardous pursuant to Chapter 21E of the Massachusetts General Laws; and (b) the LESSEE shall be responsible for compliance with requirements imposed by the Americans with Disabilities Act relative to the layout of the leased premises and any work performed by the LESSEE therein.
9. FIRE INSURANCE

The LESSEE shall not permit any use of the Premises which will make voidable any insurance on the property of which the Premises are a part, or on the contents of said property or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its powers, the LESSEE shall on demand reimburse the LESSOR, and all other tenants, all extra insurance premiums caused by the LESSEE's use of the Premises.
10. MAINTENANCE

- A. LESSEE'S OBLIGATIONS
- The LESSEE agrees to maintain the Premises in good condition clear and free of all debris and trash.
- LESSEE shall remove snow from the Premises including any adjacent walkways.
- Lessee shall remove any car which is parked overnight. All overnight parking shall be prohibited.
- Lessee shall provide appropriate lighting for the Premises which shall be approved in advance by the Lessor and which shall comply with all of the rules and regulations of the City of Newburyport Zoning Ordinances and general ordinance.
- B. LESSOR'S OBLIGATIONS
- The LESSOR agrees, except as noted above for snow removal, to maintain free and clear access to and from the Premises and to not interfere and/or prohibit the use of the Premises by the Lessee as noted herein.
11. ALTERATIONS – ADDITIONS
- The LESSEE shall not make any changes to the Premises but shall be permitted to prepare the parking area with appropriate striping and landscaping as required by any local approvals.
12. ASSIGNMENT - SUBLEASING
- The LESSEE shall not assign or subject the whole or any part of the Premises without LESSOR's prior written consent. Notwithstanding such consent, LESSEE shall remain liable to LESSOR for the payment of all rent and for the full performance of the covenants and conditions of this lease.
13. TERMINATION:
- Notwithstanding any term herein to the contrary, either Party may terminate this Lease upon one hundred eighty (180) days' written notice to the other party at which time all obligations of either party shall cease and this Lease shall no longer be of force and effect and neither party shall have further recourse at law or in equity. However, in no event may the Lessor terminate this Lease if the uses at 79 and 79A Parker Street continue as a Tap Room and Event facility.
- In the event the Lessee breaches the Lease by either non-payment or failure to fulfill any obligation hereunder, the Lessor shall have any other right at law or in equity in order to recover any damages resulting from said breach, including attorneys fees and court costs.
- In the event of Termination hereunder prior to the ceasing of the uses of the property at 79 and 79A Parker Street as a Tap Room and Event Hall, the Lessee and the Lessor shall provide immediate notice to the City of Newburyport.
14. SUBORDINATION
- This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter, a lien or liens on the property of which the Premises are a part and the LESSEE shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage.
15. LESSOR'S ACCESS
- The LESSOR or agents of the LESSOR may, at reasonable times and with reasonable notice, enter the Premises and may remove placards and signs or other trash or debris, and make repairs and alterations as LESSOR should elect to do. .

registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSOR at such address as the LESSOR may from time to time advise in writing. All rent notice shall be paid and sent to the LESSOR at 77 Parker Street, Newburyport MA 01950 or to whomever or wherever the LESSOR may designate in the future.

21. SURRENDER The LESSEE shall at the expiration or other termination of this Lease remove all LESSEE's signage and effects, if any, from the Premises and shall leave the Premises, in good condition, damage by fire or other casualty only excepted.
22. CONDITION OF PREMISES Except as may be otherwise expressly set forth herein, the LESSEE shall accept the Premises "as is" in their condition as of the commencement of the term of this Lease, and the LESSOR shall be obligated to perform no work whatsoever in order to prepare the Premises for occupancy by the LESSEE.
23. FORCE MAJEURE In the event that the LESSEE is prevented or delayed from making any repairs or performing any other covenant hereunder by reason of any cause reasonably beyond the control of the LESSEE, the LESSEE shall not be liable to the LESSOR therefore nor, except as expressly otherwise provided in case of casualty or taking, shall the LESSOR be entitled to any abatement or reduction of rent by reason thereof.
24. LIABILITY OF OWNER No owner of the property of which the Premises are a part shall be liable hereunder except for breaches of the LESSOR's obligations occurring during the period of such ownership. The obligations of the LESSOR shall be binding upon the LESSOR's interest in said property, but not upon other assets of the LESSOR, and no individual partner, agent, trustee, stockholder, officer, director, employee or beneficiary of the LESSOR shall be personally liable for performance of the LESSOR's obligations hereunder.
25. INTEGRATION CLAUSE This Agreement contains the full and complete understanding of the parties. It supersedes any and all prior written agreements, negotiations, representations, understandings and discussions by or between the Parties.
26. BINDING EFFECT The Parties represent and warrant that they have executed the Agreement by persons authorized to bind them to its terms. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, legal representatives, attorneys, shareholders, officers, directors, employees, agents, divisions, parent companies, subsidiaries or affiliated corporations, successors, and assigns.
27. WAIVER AND AMENDMENT: Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment. To the extent allowed by law, any conditions, duties, and obligations contained in this Agreement may be waived only by written Agreement by both parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.
28. FORUM AND CHOICE OF LAW: This Agreement and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this _____ day of _____, 2018.

Plum Island LLC

LESSEE

LESSOR

NEWBURYPORT

»» BREWING CO ««

SAMPLE POTENTIAL MENU

Cheeseburgers

Sandwiches

Flatbreads

Salads

Pretzels

Snacks

Soft Drinks