

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 6, 2023**

MEMBERS PRESENT: Matt Keiser – Chair, Richard Brooks, Keith Perkins, Ken Hilton-Alternate, Ken Vincent, Brad Fredette

EXCUSED MEMBERS: Anthony Jones

STAFF PRESENT: Dana Crossley, Planning Technician
Anna Stockman, Planning Secretary

The meeting was called to order at 7:00pm.

1) Approval of the minutes:

Brooks MOVED to approve the August 2nd, 2023 minutes.

The MOTION was SECONDED by Perkins.

The MOTION CARRIED 3-0-2, with Vincent, and Fredette abstaining.

2. OLD BUSINESS

- a. Any old business that may come before the Board.
None.

3. NEW BUSINESS

- a. **85 Elm Street Somersworth LLC and 20 Green Street Somersworth LLC are seeking an Appeal from an Administrative Decision of the Historic District Commission dated June 28th, 2023 to deny the change in proposed building material for a property located at 85 Elm Street and 20 Green Street in the Business with Historic Overlay (BH) District, Assessor's Map 10 Lots 177 and 176, ZBA#11-2023. PUBLIC HEARING**

Crossley stated the applicant submitted a request to continue the item to the October 4th Zoning Board of Adjustment meeting due to a prior commitment that conflicted with the meeting date so they were not able to be in attendance.

MOTION: Fredette MOVED to CONTINUE the application to the October 4th Zoning Board of Adjustment meeting.

The MOTION was SECONDED by Brooks.

The MOTION CARRIED 6-0-0.

- b. **New England Barrel Co. is seeking a Variance from Table 4.A.4 to allow an industrial/light industrial use (distilled spirits plant) for a property located at 497 High Street in the Residential/Commercial (R/C) District, Assessor's Map 40 Lot 53, Condo Map 90 Lot 53C, ZBA#12-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. The applicant is proposing to establish a distilled spirits plant with tasting area and shop for merchandise within an existing 4,600 SF space. The proposed use is for New England Barrel Company's products and would involve taking deliveries from other distilleries, blending spirits for their product line, storing spirits in barrels, and bottling products for shipment. She said the property has three condo units on site within a 14,000 SF building, two of which are owned and operated by Monro Muffler

Brake Incorporated. She said if the variance is granted, a level of site plan review would be required. She stated the applicant has addressed all five criteria for a variance and the application is ready for the Board to discuss.

Chris Rice of TF Moran was in attendance to represent the application on behalf of the applicant, New England Barrel Company. **Katie Fleisher**, the Commercial Real Estate Broker for New England Barrel Company was also in attendance. He stated the President and Founder of New England Barrel Company, **James Saunders** was not able to attend, however he was available to provide information over the phone during the meeting, if needed.

Rice provided an overview of the variance request. He stated that although the business will be considered a distilled spirits plant, the company would not be distilling beverages at the proposed facility. He said the proposed use does not fit into one of the allowable use categories that are currently listed in the City's Zoning Ordinance. He noted the company's primary use would be considered light industrial/industrial use but retail and commercial uses would also be components, which would consist of a small tasting room and small retail shop.

He pointed out characteristics of the site on renderings, including the abutter, Tire Warehouse which occupies 7,000 SF at the property and the vacant space where the proposed use would be located. He noted there would be between three hundred-to-five hundred fifty-three-gallon barrels of their product stored onsite. He stated the business would have three-to-four employees onsite on a regular basis and the site would average two deliveries a week.

He provided a summary of their responses to the variance criteria. He stated the proposed use would not diminish surrounding property values as it is not easily visible from the street and the use would benefit the community by filling vacant space. He said the use would not be contrary to public interest nor alter the character of the surrounding area. Regarding hardship, he noted the proposed use is unique and it doesn't fit within the categories in the permitted uses within the Zoning Ordinance, and denying the variance would result in an unnecessary hardship.

He noted a letter the City of Somersworth received from Gretchen Young, the Environmental Projects Manager of City of Dover regarding the site's location within the Willand Pond watershed, which is also within the Dover's drinking water aquifer. For these reasons, Young requested that stormwater treatment be enhanced to reduce phosphorous loading, as there is currently no stormwater treatment onsite. This would include a Spill Prevention and Maintenance Plan, a reduction of winter salt usage, and the hiring of a green SnowPro certified professional for winter maintenance. The letter also noted a concern about whiskey fungus, which has been found in York, Maine, where there is a similar operation. Rice stated they would be able to accommodate most if not all of those requests raised within the letter.

Brooks asked for clarification on the nature of the tasting room and whether any products would be distilled at the facility.

Rice responded yes; customers would schedule a tasting to sample certain drinks. He stated the license they would obtain would regard the site as a distillery plant which would cover a range of functions within the building, even if licensees don't utilize all of the uses. He said they do not have plans to distill at the facility, instead, the company would blend, bottle, and sell their products.

Hilton asked about the number of barrels they would store onsite.

Rice stated there would be between three hundred-to-five hundred barrels at the property.

Vincent asked about the feasibility of the site becoming a distillery in the future, if the Board were to grant the variance. He noted the applicant's detailed overview of their application.

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Saunders stated there are currently no plans to distill at the location due to the size of the space. He noted if any abutting space were to vacate in the future, they might reconsider distilling beverages.

Keiser stated if the ZBA were to approve the application with no conditions, the company would be permitted to distill spirits at the property.

Keiser referenced the hardship criteria and asked the applicant to describe the hardship of the subject property's location.

Rice stated the property is surrounded by other uses that don't comply with current zoning regulations. He said their proposal is a combination of uses of industrial/light industrial, retail, and commercial, in an adequate location that is surrounded by other businesses with similar uses.

Fredette asked whether there a zoning district within Somersworth that would allow the combination of uses proposed by the applicant.

Crossley stated the Commercial/Industrial District and Business District would permit industrial/light industrial, retail, and restaurant uses.

Keiser closed the public hearing.

Fredette stated his understanding of the hardship is the subject property does not have much road frontage and it would be challenging to fill the space with another use. He noted the location of the proposed use requires the Board to take proposals on a case-by-case basis as the areas has transitioned from Residential to Commercial uses over the years.

Vincent stated he is in favor of the application and he thinks it meets the five variance criteria. He noted that compared to most other industrial or light industrial uses, the distilled spirits plant would be relatively quiet.

Brooks stated he agrees that the application satisfies the five variance criteria and industrial/light industrial use would be minimal. He noted the application would not involve constructing a new building, rather, it would change the use within the existing building.

Perkins stated he agrees with Brooks. He said he believes the proposed use is a reasonable one and he is in support of the application.

Fredette stated due to the limited square footage of the space, he doesn't feel it is large enough to create a large industrial use. He said he in favor of the application.

Hilton stated he echoes what other members have said.

Regarding regional impact, Crossley stated it would be up to the Board if they felt there was regional impact based off of the letter received from the City of Dover.

Keiser asked about the criteria that would determine whether there is regional impact. He asked whether the City of Dover is speaking from the perspective of a Somersworth landowner.

Fredette stated he thinks the letter is speaking on behalf of the citizens of Dover for the impact it would or would not have on the watershed and use of water resources of Willand Pond. He noted the Board has never covered regional impact as a Board.

Crossley stated if the Board felt the project had regional impact, there would be a motion that it does have potential for regional impact. She said the Board would indicate who it is having regional impact on, and why that community has it. It would then stop the hearing and the Somersworth would notify that community and Strafford Regional Planning Commission would also be notified, and the application would be continued to the next meeting. She said usually, regional planning provides some sort of comment based off of the potential for regional impact.

Brooks asked whether there is a regional impact vote at the planning board level as well.

Crossley responded yes. She stated the Planning Board could feel there is potential for regional impact.

Fredette stated he thinks that the regional impact determination is more on the shoulders of the Planning Board rather than the Zoning Board. He noted parking lot maintenance is not normally within the purview of the ZBA.

Crossley stated the nature of the concerns raised appear to be more in relation to a site plan, as they relate to stormwater, which are under the Site Plan Review Regulations. She stated the ZBA could put something in the motion for the Planning Board to give special attention to. She noted spill maintenance plans would be something the Site Review Technical Committee (SRTC) would request and review.

Fredette asked whether the application will go for full site plan review before the Planning Board or whether it would be reviewed by staff.

Crossley stated the application would either require minor site plan review by the SRTC or full review by the Planning Board. She said the applicant has already been informed there would be a level of site plan review required.

Keiser stated if the Zoning Board feels there is regional impact, we need to vote there is regional impact.

Crossley stated the Zoning Board should consider the use, and if they allow the variance for the use, whether they feel that the use has potential for regional impact.

Brooks stated he doesn't think a business occupying limited square footage with very few customers visiting the site is going to have regional impact. He stated that similar to most other businesses, there could be spill potential as an environmental hazard.

Keiser asked if the ZBA granted the variance, whether that would require Planning Board approval and further, whether the ZBA could list that as a requirement rather than review by SRTC. He asked if it would gain much to do that.

Crossley stated there are certain criteria set forth in the Site Plan Review Regulations based off of a variety of factors including the size, the intensity of the development, and whether they have to seek waivers. She stated if the Director of Planning and Community Development feels that the project is more intensive, the use would need to go before the Planning Board. She stated that typically, the Planning Board is a more intense review process. She said if there are any waivers being sought from the Site Plan Review regulations, the applicant would need to go before the Planning Board.

Regional Impact

MOTION: Brooks MOVED that the variance request of New England Barrel Co. DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.

The MOTION was SECONDED by Vincent.

MOTION CARRIES 5-0-0.

MOTION: Fredette MOVED that the request of New England Barrel Co. for a Variance from Table 4.A.4 to allow an industrial/light industrial use (distilled spirits plant) for a property located at 497 High Street be **APPROVED.**

The MOTION was SECONDED by Vincent.

Discussion:

Keiser stated he will not be voting in favor of the motion, although he supports the application. He said he cannot find anything that is unique to the property that burdens it from the zoning restrictions of having an industrial complex.

Fredette asked whether the Board should put a limitation on the motion that it be the size as presented.

Crossley stated if the Board feels it is an important aspect, they should put it as a condition of approval or as part of the motion.

Fredette stated he would like to amend his motion to include that the space be the size and manner presented as presented.

MOTION: Fredette MOVED that the request of New England Barrel Co. for a Variance from Table 4.A.4 to allow an industrial/light industrial use (distilled spirits plant) for a property located at 497 High Street be **APPROVED WITH THE FOLLOWING CONDITION:**

1. That the use be limited to the 4,600 SF space as submitted and presented at the meeting.

The MOTION was SECONDED by Brooks.

Discussion:

Vincent stated he feels sometimes businesses need to expand and he would not want to hinder or disable the business from doing so. He noted if the applicant wanted to expand upon the building or property, they would need to come before the Planning Board.

Fredette stated that due to the nature of the request being a variance and the potential for an expansion to change the tenor of the business, that is his reasoning behind the motion.

The MOTION CARRIED 4-2-0, with Keiser and Vincent opposing.

c. Any other new business that may come before the Board.

None.

Crossley reminded the Board of the upcoming Community Housing Workshop on Thursday, September 14th in the Blackbox Theater at the Somersworth High School at 18 Cemetery Road. She stated the event is part of the City's Master Plan Update initiative and the purpose is to receive housing feedback from residents. She encouraged Board members to attend and spread the word to others.

MOTION: Brooks MOVED to adjourn the meeting.

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The MOTION was SECONDED by Fredette.
The MOTION CARRIED 6-0-0.

The meeting was adjourned at 7:53pm.

Respectfully submitted,

Anna Stockman
Planning Secretary