

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT
Meeting Minutes, Monday, November 15, 2021

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Call to Order: Acting Chair John Frink called the November 15, 2021, meeting at 6:31 PM.

Present: Vice-Chair Ralph Estes; Bob Byrnes; John Frink; Edna Mosher; Alternate Board members, Will Gilbert and Kathy Latchaw; Derick Willson; Town Planner John Krebs and Recording Secretary Jane Kendall

Absent: Chair Matt Morton

Public Guests: Steve Haight, P.E. with CivilWorks Engineering; Attorney Alec McEachern; Peter Beauregard and Erol Moe, CEO's Stoneface Brewing; John Ricci of Ricci Construction; Mark Phillips; Tim Connors

It was announced that Board member, John Frink would chair the meeting in Chair Morton's absence, and Alternate Will Gilbert would be voting.

1) Request by **Rollins Farm Holding, LLC** and **Stoneface Brewing Company** for a variances from Article III, Sections 2.C allow public dining/bar with retail sales as accessory uses in the Office Zoning District;
Article III, Section 8 to allow paved parking within 20.96' off Shattuck Way where 50' was required;
Article III, Section 8 to allow a structure within 30' off the front property line where 75' was required;
Article IV, Sections 6 to allow parking within 20' off the front property line where 75' was required;
Article IV, Section 10 to allow two principal buildings on the same lot;
Article IX, Section 5 – Table IX-1 to allow two free standing signs on the same lot;
Article IX, Section 6, Table IX-2 to allow two 56 s.f. free standing signs when the maximum sign area was 50 s.f. per side;
Article IX, Section 6, Table IX-2 to allow 196 s.f. building identification sign on the west façade when the maximum aggregate sign area on the building front was 4 s.f.;
Article IX, Section 8 to allow two free standing signs 20' from the front property line where 50' was required
on property located at **Shattuck Way, Tax Map 13, Lot #5A.**

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44 Town Planner, John Krebs suggested that the Board review the variances for
45 dimensional relief first.

46 Mr. Krebs informed the Board that two areas of pavement had been discovered
47 in the wetlands setback. Steve Haight, P.E. with CivilWorks Engineering passed out
48 revised plans.

49 Attorney Alec McEachern stated that the pavement areas were removed
50 because those areas weren't noticed for a variance request.

51 Mr. Haight gave an overview of the 5.7-acre lot with detention ponds that had
52 been graded and used for a gravel laydown area for Eversource. Mr. Haight said the
53 parcel was large enough for two lots, but they were consolidating it for one single use.

54 Mr. Haight said the lot was surrounded by River Road and Shattuck Way, and
55 they were requesting variances from the 75-foot setbacks to utilize the most building
56 area for the building, and the parking area.

57 Mr. Krebs noted that the parking requirements were generic based on industry
58 standards, so the Planning Board would probably require more spaces than requested
59 because they expected the business success to continue to grow.

60 Acting Chair Frink commented that it seemed that the existing building on the
61 corner of the lot would be considered an accessory building, and asked why asking for
62 two principal buildings. Mr. Krebs said he thought that Stoneface wasn't sure what they
63 were going to do with the building yet, and allowing two buildings on the lot would allow
64 them to rent out the existing building to generate income while building the new building.
65 Attorney McEachern added that he thought that the reason two principal buildings were
66 not allowed on one lot was to maintain the rural appearance of single lots, but this was a
67 larger lot.

68 Board member, Edna Mosher said she would like to see the existing building
69 removed, and asked if they intend to demolish it. Co-owner of Stoneface Brewing, Peter
70 Beauregard said it would depend on when they could take it down. Property owner,
71 Mark Phillips added that the existing building was a footprint place holder now, so they
72 wouldn't remove it until they were able to replace it.

73 Board member, Bob Byrnes asked why couldn't subdivide and deed the parcel
74 as two lots. Mr. Phillips responded that other towns allow easements, but the Planning
75 Board required detention basins to be on lots in question, and subdividing would cut the
76 detention pond off from the larger lot.

77 Mr. Krebs said none of the businesses on Shattuck Way complied with the 75-
78 foot setback requirement, and the eye surgical center asked for a similar variance from
79 dimensional setbacks.

80 Ms. Mosher asked if they would continue with their existing hours of operation.
81 Mr. Beauregard said they might go later, but they wouldn't want to go until 11 p.m. or
82 midnight because they still wanted their staff to get out at a reasonable time.

83 Ms. Mosher asked they planned on having bands. Mr. Beauregard replied that
84 they had gone before the Planning Board to request approval for occasional
85 entertainment, but hadn't been able to do so in a way that wasn't disruptive, so they
86 hoped to in the new location. Mr. Krebs noted that the public space was toward the back
87 of the site.

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88 Acting Chair Frink noted that restaurant use was not allowed in the Office Zone,
89 and asked what percentage of the business would be dining and retail. Mr. Beauregard
90 replied that 10% of beer went to the restaurant, and 90% was for distribution in their
91 current site down the street. Mr. Beauregard said they expected that their distribution
92 might increase by 50%, and although he expected that their restaurant use would go up,
93 he expected the percentage to go down in proportion.

94 Acting Chair Frink asked how many seats there would be at the new
95 establishment. Mr. Beauregard said perhaps 200, but parking dictated how many
96 patrons they could have.

97 Mr. Beauregard said many patrons came in alone in their cars on Thursday and
98 Friday nights, which filled the parking lot, but didn't fill their seating for 100 at their
99 current site, with some parking along Shattuck Way, which the Planning Board didn't
100 like, so they wanted to expand.

101 Acting Chair Frink commented that the existing building didn't conform, and he
102 wondered if a previous applicant's request to serve cooked food might have been
103 allowed if they requested a similar change of use request. Mr. Krebs said anyone could
104 ask for use variance, but they also had to consider that the State of New Hampshire
105 permitted food service for tasting rooms. Attorney McEachern added that they had an
106 alcohol license that permitted them to sell food along with beer on their manufacturing
107 site.

108 Mr. Byrnes asked if they could serve spirits as well as beer. Mr. Moe said they
109 currently didn't have a cocktail license, but they might apply for one later.

110 Acting Chair Frink said he just wanted to differentiate this request from another
111 applicant that wanted to cook and sell seafood out of the existing building. Ms. Mosher
112 responded that she viewed it as allowing an existing use down the street. Acting Chair
113 Frink commented that they were also moving from an Industrial Zoned area to the Office
114 Zone where restaurant use was not allowed.

115 Ted Connors of Newington Road and Chair of the Board of Selectmen said he
116 thought that the brewery was a great asset to the town, that also supported charities
117 and the school. Mr. Connors said he had talked to Selectmen Marconi who was a
118 supporter also.

119 Acting Chair Frink closed the hearing to public comment.

120 Mr. Byrnes commented that it seemed that the requests were stepping on a lot of
121 regulations, and restaurant use was for a different zone.

122 Attorney McEachern stated that granting their request for the setback variances
123 from Article III, Sections 2.C to allow public dining/bar with retail sales as accessory
124 uses in the Office Zoning District would not be contrary to the public interest because it
125 would not alter the character, or impact the health, safety or welfare of the community
126 considering that the new Stoneface site would be no different than their existing
127 business down the street.

128 Attorney McEachern stated that granting their request would allow them to
129 expand their business, and provide new jobs for economic prosperity rather than look at
130 other sites out of town.

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131 Attorney McEachern stated that granting their request would be in the spirit and
132 intent of the Ordinance to encourage economic prosperity by developing a vacant lot.

133 Attorney McEachern stated that substantial justice would be served, and denying
134 would provide no benefit to the public as they would need to find another site.

135 Attorney McEachern stated that granting their request would not cause property
136 values to diminish because there would be little change to the existing conditions
137 because the site was surrounded by industrial use, and there would be little change to
138 traffic patterns from the existing traffic pattern from their existing operation further down
139 on Shattuck Way.

140 Attorney McEachern stated that literal enforcement of the Ordinance would result
141 in an unnecessary hardship owing to the special condition of the site that had an
142 irregular shape with road frontage, and wetlands setbacks that would only leave 30% of
143 the site as buildable.

144 Attorney McEachern stated that the State requires food service as a component
145 of a liquor license, so it was a reasonable and customary aspect in the sale of
146 beverages.

147 Alternate Board member, Derick Willson commented that allowing diverse uses
148 in the Industrial and Office Zones would attract new businesses.

149 Mr. Byrnes noted that a hotel was an acceptable use in the Office Zone that
150 allowed non-public dining as an accessory use, and he thought the concerns for noise
151 and traffic from a hotel would be similar to restaurants.

152 Acting Chair Frink commented that traffic concerns for hotel use in the Office and
153 Industrial corridor took into account that hotel patrons usually went in once for overnight
154 stays. He said he sometimes questioned some of the zoning regulations, but the effects
155 of heavy traffic had to be considered for residents of Patterson Lane.

156

157 *Bob Byrnes moved to grant the request by Rollins Farm Holding, LLC and*
158 *Stoneface Brewing Company for a variance from Article III, Sections 2.C allow public*
159 *dining/bar with retail sales as accessory uses in the Office Zoning District on property*
160 *located at Shattuck Way, Tax Map 13, Lot #5A. Edna Mosher seconded the motion.*

161

162 *Edna Mosher went through the five criteria for granting the variance, stating that*
163 *it would not be contrary to the public because the expanded business would improve*
164 *the lot, and support the Town's tax structure.*

165 *Ms. Mosher said the spirit of the Ordinance and substantial justice would be*
166 *observed because manufacturing use was allowed in the Office District, and the*
167 *restaurant use was an allowed use for alcohol sales.*

168 *Ms. Mosher stated that surrounding property values would be enhanced instead*
169 *of diminished by the change of use, and literal enforcement of the Ordinance would*
170 *create a hardship.*

171 *The motion passed 4-0 with all in favor.*

172

173 *Ralph Estes moved to grant Article III, Section 8 to allow paved parking within*
174 *20.96' off Shattuck Way where 50' was required; Article III, Section 8 to allow a*

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175 *structure within 30' off the front property line where 75' was required; and Article IV,*
176 *Sections 6 to allow parking within 20' off the front property line where 75' was required*
177 *on property located at Shattuck Way, Tax Map 13, Lot #5A. Will Gilbert seconded the*
178 *motion.*

179
180 *Edna Mosher went through the five criteria for granting the variance, stating that*
181 *it would not be contrary to the public because of similar setbacks for other properties on*
182 *Shattuck Way.*

183 *Ms. Mosher stated that the spirit of the Ordinance and substantial justice would*
184 *be observed because the setbacks would be consistent with the other properties on the*
185 *corridor.*

186 *Ms. Mosher said again, the value of the property would improve the value of the*
187 *surrounding properties as well.*

188 *Ms. Mosher said literal enforcement of the Ordinance would create a hardship for*
189 *the business owners who were trying to maximize the buildable area that was affected*
190 *by the location and configuration of the lot.*

191
192 *The motion passed 4-0 with all in favor.*

193
194 *Attorney McEachern stated that granting Article IV, Section 10 to allow two*
195 *principal buildings on the same lot wouldn't be contrary to the public interest because*
196 *the presence of more than one building wouldn't alter the character, or impact the*
197 *health, safety, or welfare of the surrounding community. Attorney McEachern said there*
198 *was enough land for two lots of record, but it was not practical to subdivide. Attorney*
199 *McEachern said the smaller building would look subordinate, so there wouldn't be two*
200 *equally large buildings.*

201 *Attorney McEachern stated that the spirit of the Ordinance was to preserve the*
202 *rural character of the town by preventing overcrowding, and the separate buildings*
203 *wouldn't violate the character, health, safety, and welfare of the surrounding community.*

204 *Attorney McEachern stated that substantial justice would be service by allowing*
205 *the expansion, and the loss of increased taxes would result in the denial.*

206 *Attorney McEachern stated that the presence of two buildings would not impact*
207 *the surrounding property values of the industrial use across the street was based on*
208 *profit, or the Spaulding turnpike on other side, and the other office buildings wouldn't be*
209 *impacted because there was plenty of area between the buildings.*

210 *Attorney McEachern stated that an unnecessary hardship because it would not*
211 *be practical to subdivide the large parcel because of the strange configuration of*
212 *wetlands on the lot that would make it impractical to subdivide, yet a single building on*
213 *such a large lot would appear out of place.*

214 *Mr. Byrnes asked if the existing building would come down. Mr. Beauregard said*
215 *they would need to determine what they could do with the building, but it wouldn't sit*
216 *vacant, or if they should tear it down. Mr. Beauregard went on to say when they would*
217 *make a final decision because they still had a long time to go before they started*
218 *building.*

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219 John Ricci, of Ricci Construction said the Planning Board expressed a strong
220 interest in the removal of the building, and the variance would make it easier to retain
221 the same footprint, and granting the request would make it easier to allow for the
222 building of a better building that would generate revenue.

223 Mr. Byrnes wondered if should add condition on the removal of the building.
224 Acting Chair Frink said the problem was that they would lose the grandfathered status
225 of the existing building's footprint if they tore the building down.

226 Ms. Mosher asked if they suggested putting a time limit on leaving the building
227 up. Mr. Willson agreed, but said he was concerned that they might replace the building
228 with another if they granted the request, but asked that they tear the building down.

229 Mr. Krebs said another tenant may have a diff req so may be placeholding until
230 they determine. Mr. Krebs suggested that they specify the location of the existing
231 building as shown on the plan.

232 Mr. Byrnes agreed that the approval could be subject to the plot plan to prevent
233 the accessory building from wandering or getting bigger.

234
235 *Bob Byrnes moved to grant Article IV, Section 10 to allow two principal buildings*
236 *on the same lot on property located at Shattuck Way, Tax Map 13, Lot #5A as laid out in*
237 *the zoning exhibit plot plan dated November 10, 2021. Edna Mosher seconded the*
238 *motion.*

239 *John Frink went through the five criteria for granting the variance, stating that it*
240 *would not be contrary to the public interest because the lot had sufficient square*
241 *footage, and it would be in the spirit of the Ordinance because there was significant*
242 *frontage to accommodate the two buildings that would be separated by the wetland.*

243 *Mr. Frink said granting the variance would not diminish the value of the*
244 *surrounding properties because the one building already existed, and the new structure*
245 *would improve the future value of the property.*

246 *Mr. Frink said literal enforcement of the Ordinance would create a hardship*
247 *because the property could not be subdivided without disturbing the drainage of the*
248 *principal property.*

249 *The motion passed 4-0 with all in favor.*

250
251 Attorney McEachern said they were asking for a variance to allow two signs on
252 the building with one facing the Spaulding Turnpike.

253 Mr. Willson asked how they came up with the proposed size. Mr. Beauregard
254 replied that the architect came up with the size. Mr. Haight added that architects often
255 determined the size of signs based on the mass of the building.

256 Mr. Krebs said this was a unique location and business, and the sign looked
257 proportionate to the building. Mr. Beauregard said they were not needing a billboard
258 sized sign; they were just trying to meet expectations for visibility.

259 Acting Chair Frink asked if they could reduce the freestanding sign from 56 sf to
260 50 sf. Mr. Beauregard said it was created to fit the logo. Mr. Krebs said he was not sure
261 if the hops sign was a sign or art.

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262 Mr. Krebs asked why they would bother with the variance for the northside if they
263 didn't know what the sign was going to be for the smaller building.

264 Attorney McEachern stated that the regulation allowed one freestanding sign on
265 lot, and the sign ordinance says that a sign is allowed on each street when there is
266 frontage on more than one street, and one of the signs can also be freestanding or on
267 the building. Attorney McEachern added that allowing the signs would be in the public
268 interest of safety.

269 Attorney McEachern said the spirit of the Ordinance and substantial justice would
270 be observed by aiding the public in finding their destination.

271 Attorney McEachern said there was no danger that the surrounding industrial
272 property values would be diminished with a previously vacant lot.

273 Attorney McEachern said literal enforcement of the Ordinance would create an
274 unnecessary hardship because the requests for signage to identify their business was
275 reasonable.

276
277 *Edna Mosher moved to grant Article IX, Section 5 – Table IX-1 to allow two free*
278 *standing signs on the same lot; Article IX, Section 6, Table IX-2 to allow two 56 s.f. free*
279 *standing signs when the maximum sign area was 50 s.f. per side; Article IX, Section 6,*
280 *Table IX-2 to allow 196 s.f. building identification sign on the west façade when the*
281 *maximum aggregate sign area on the building front was 4 s.f.; and Article IX, Section 8*
282 *to allow two free standing signs 20' from the front property line where 50' was required*
283 *on property located at Shattuck Way, Tax Map 13, Lot #5A as laid out in the zoning*
284 *exhibit plot plan dated November 10, 2021. Will Gilbert seconded the motion.*

285 *John Frink went through the five criteria for granting the variance, stating that it*
286 *would not be contrary to the public because two signs made sense, as did relief from*
287 *the setback considering the wide right-of-way. Mr. Frink said the sign identification from*
288 *the highway was necessary because there was no direct access.*

289 *Edna Mosher added that literal enforcement of the Ordinance would create a*
290 *hardship because the signage was needed for the businesses.*

291 *The motion passed 4-0 with all in favor.*

292
293 **Minutes:** *Edna Mosher made a motion to approve the Minutes of August 17,*
294 *2021, meeting with corrections as discussed. Kathy Latchaw*
295 *seconded, and all were in favor.*

296
297 **Adjournment:** *Bob Byrnes moved to adjourn the meeting. Edna Mosher*
298 *seconded, and the meeting adjourned at 8:33p.m.*

299
300 **Next Meeting:** To be determined

301
302 **Respectfully**
303 **Submitted by:** Jane K. Kendall, Recording Secretary