

**Town of Milford
Zoning Board of Adjustment
August 15, 2019
Case #2019-07
Ogie Brewing, LLC
Request for Rehearing**

Present: Steve Bonczar, Chair
Joan Dargie, Vice Chair
Rob Costantino
Michael Thornton
Tracy Steel
Paul Dargie, Board of Selectmen Representative

Absent: Wade Scott Campbell, Alternate
Karin Lagro, Alternate

Lincoln Daley, Community Development Director

Secretary: Peg Ouellette

Ogie Brewing, LLC, for the property located at 12 South Street, Milford Tax Map 26, Lot 157 in the Commercial zoning district is seeking a Special Exception of the Milford Zoning Ordinances per Article V, Section 5.05.2.A.4 to permit the manufacturing of craft beer products associated with a low-volume nano brewery.

ZBA minutes for 8/15/19 were approved 10/17/19

1 S. Bonczar, Chair, opened the meeting and explained the procedures of the Board. He introduced the
2 Board members.

3
4 S. Bonczar then stated that the agenda had two cases before the Request for Rehearing. Since J. Dargie
5 had to leave early, they would handle this first because J. Dargie was a member of the Board for this case.
6 It was not a public hearing. There would be no public comment. The Board would review the Request
7 for Rehearing, discuss, and make a decision on whether or not to grant a rehearing. He assumed everyone
8 on the Board had a chance to read the two requests: one from Aaron Kaplan of LCimino, LLC and one
9 from Buttermilk Falls, LLC.

10
11 J. Dargie asked if there was a separate rehearing request for Buttermilk Falls.

12
13 S. Bonczar said it was a request for both.

14
15 J. Dargie said she had only read one.

16
17 S. Bonczar said it was a request for rehearing. Anybody could do a request for two parties. They would
18 review each request for rehearing and if on any one of them they agree there should be a rehearing, they
19 would have a rehearing.

20
21 J. Dargie said she only saw one.

22
23 R. Costantino said he got both. They were both downloaded on the website.

24
25 S. Bonczar didn't know how they could do it.

26
27 J. Dargie said there may be a request from one party they didn't agree with, but the other one is the one
28 they do.

29
30 S. Bonczar said if they felt one or the other deserved a rehearing there could be a rehearing.

31
32 R. Costantino said they would both have the same result.

33
34 S. Bonczar said if there were ten requests, if they felt any of them was valid they would have to have a
35 rehearing.

36
37 J. Dargie said she could read it then, while they kept going.

38
39 S. Bonczar wanted to be sure she had time to look at it. He explained procedure. They would ask for
40 comments on each request. If either one warranted a rehearing they would end up asking for a motion
41 and vote on that.

42
43 M. Thornton asked which to proceed with first.

44
45 S. Bonczar said Buttermilk Falls. He had reviewed it and took a lot of notes. They also want to curb the
46 discussion to actual request for rehearing and not rehash the case. The case was closed. It was a matter
47 of looking at documentation given and determining whether there was substantial and compelling

1 evidence to warrant a rehearing, or evidence they made an error in some way, or whether there was new
2 information provided in the request.

3
4 M. Thornton made the observation that it was unique to have an objection to a decision that had not been
5 made. He understood the concerns of both applicants.

6
7 S. Bonczar asked what he meant.

8
9 M. Thornton said this was a motion for rehearing with initial proposal request, which proposal or request
10 had not received a yes or no.

11
12 S. Bonczar said yes, it had. On June 20 they approved five conditions. This request for rehearing was to
13 re-look at the case.

14
15 M. Thornton said no operation had taken place, no complaints. They had a right to appeal. It was
16 seemingly directed at imposing many expensive restrictions. He found some very valid concerns and
17 some uncommon fears. Concerns were based on facts.

18
19 S. Bonczar asked if any concerns that had not been discussed at previous meetings.

20
21 M. Thornton said no.

22
23 S. Bonczar said they were not going to rehash the case.

24
25 M. Thornton said that was what he was trying to get to. Didn't find any concern based on this had a point
26 such as "you made a mistake based on A,B,C."

27
28 S. Bonczar said it didn't have to be a mistake, also any substantially new information or complaint, if it
29 was that different from what was already heard. Applicant has a right not to be tried multiple times.

30
31 M. Thornton said that was his point. Attorney Quinn and Mr. Kaplan did explain proposal of putting their
32 fence and their expert made some pointed recommendations which were in the minutes and part of the
33 consideration to get an approval. His point was he had no concern except for a few typos in the
34 application for the rehearing – Attorney Quinn's, page 5, second paragraph from the bottom that refers to
35 both 16,000 barrels of beer and 16,000 gallons of beer.

36
37 S. Bonczar asked where he was reading. Focus not on the minutes or material from the case.

38
39 M. Thornton said from page 5 of the motion for rehearing. He would hold his comments until he could
40 find it.

41
42 R. Costantino said he read both the Buttermilk and the other. He didn't see any errors or any talk of
43 error in their procedure or new information. It implied conditions had changed but he didn't see any
44 difference.

45
46 S. Bonczar asked T. Steel.

47 T. Steel said she had nothing to add.

1 J. Dargie said the only thing she was going to offer was that most of the items were things that could be
2 worked out with the applicant. Basically there were conditions covered, but not to the detail. Conditions
3 should not be getting into detail.

4
5 S. Bonczar said he looked at the Buttermilk Falls objection to the scope of the conditions. Same as the
6 conditions in the case testimony. They spent three meetings and 63 pages of minutes. They made sure
7 applicant and abutters were heard and took time to make sure conditions were just for both in a reasonable
8 manner. This [request] fails to take into consideration the hours spent and focused on not liking the
9 conditions. He didn't see any substantial new and compelling information, that said they forgot
10 something. Also concern about the stack – it was established quite clearly that the applicant was moving
11 to use the condenser not the stack for the brewing. But the fact was there was no electric heating of the
12 kettles. It was using propane and that he had been venting gasses like a restaurant. He didn't see anything
13 persuasive here that shows that the board either misinterpreted or made an error. It said they made
14 assumptions.

15
16 J. Dargie said their expert testimony was also making assumptions.

17
18 S. Bonczar said he looked at the minutes and the expert also said the condenser was usable itself. It was
19 not just one situation with the stack which this dwelt on. In his opinion, he took offense from this in that
20 it states that the Board seemed to have no interest in the adequacy of the ventilation system. We spent a
21 lot of time on this. The Board deserves an apology with regard to that statement. They spent three
22 meetings and reams of data, and to say they lost interest in that was absolutely ridiculous.

23
24 M. Thornton said in the past if they had empirical data if somebody would come forward as might
25 become appropriate would make sure it was within their scope.

26
27 S. Bonczar said it talked about Condition 4 being vague because it failed to define what is meant by
28 "storage". The fact is that 3, 4 and 5 needed to be taken together. He didn't see anything compelling that
29 stood out that they should have considered.

30
31 R. Costantino agreed.

32
33 J. Dargie said all of this being based on an assumption that there would be obnoxious odors and they had
34 no idea what would be produced

35
36 S. Bonczar said the whole case was based on that.

37
38 J. Dargie said they had to go on best knowledge and that was what they did.

39
40 M. Thornton said they had to go on statements of the applicant, that the applicant is telling the truth about
41 their plans, that they are going to take the action that's in the record

42
43 S. Bonczar said they listened to Buttermilk Falls and tried to accommodate them the best we could and
44 protect the rights of the applicant.

45
46 J. Dargie asked if they would be voting.

47
48 S. Bonczar said at the end.

1
2 M. Thornton asked it was appropriate to do a motion to voice a motion to decline?

3 S. Bonczar said not if they do them together.
4

5 R. Costantino said the result would be the same.
6

7 S. Bonczar said if he summarized the materials in Buttermilk Falls, the material didn't warrant rehearing,
8 correct?
9

10 Others agreed.
11

12 S. Bonczar said, re Kaplan, LCimino, LLC, it said that was, in his opinion, similar.
13

14 J. Dargie said it was specifically mentioned as not received the 5/16 memo sent to the Board because she
15 was not in the meeting. She read several line items in that memo and crafted the conditions out of the six
16 issues. She went down it as far as doors in the alley and storage. That was a landlord issue. They don't
17 know who had the right of way. We talked about all issues. There was nothing new.
18

19 R. Costantino said the eight issues he outlined were discussed at length at the hearing.
20

21 M. Thornton said he was only seeing six. Were there two others?
22

23 S. Bonczar referred him to page 1 of 12.
24

25 M. Thornton said he had only two. File 2019-07_N2
26

27 S. Bonczar said they were talking about 6 within.
28

29 T. Steel said nothing to add.
30

31 S. Bonczar said it was focused on the stack being used as originally proposed and the way it was going to
32 be used. The stack exists there today. He found similar disagreement with the Board scope and detail
33 with the conditions as with Buttermilk Falls. It focuses on the existing stack to be used as the primary
34 venting method. The approval was based on the applicant using an industry standard condenser and
35 existing stack would be used for heating of the kettles. Not primarily used as originally proposed for all
36 the venting for all vapors from the actual process of the heating. It talks about the attempt to mitigate.
37 That meant to alleviate or lessen. The Board couldn't guarantee anything. They were not experts. They
38 listened to testimony from both the abutters and applicant and read through pages and pages of supporting
39 documentation.
40

41 M. Thornton said both applicants for the rehearing seem to be saying that the town ordinance demanded
42 that no opportunity ever exist they not offend anyone. He didn't believe that to be the intention because
43 you cannot assure that under any circumstances.
44

45 S. Bonczar said they talked about what is offensive to one person was not offensive to another. S.
46 Bonczar asked if there is anything else in relation to the Kaplan and Buttermilk requests that they would
47 like to add?
48

1 J. Dargie said only thing concerned her. Cases were submitted as two separate requests. If this were to
2 go to Superior Court they would go separately.

3
4 S. Bonczar said they could take two votes.

5
6 J. Dargie said to call them #2019-07A and #2019-7B.

7
8 S. Bonczar asked for motion to approve the motion for rehearing as submitted from Buttermilk Falls,
9 LLC. There was no motion, so he said died.

10
11 S. Bonczar asked for motion to deny the motion for rehearing from Buttermilk Falls, LLC #2019-7A.

12
13 J. Dargie made motion.

14
15 R. Costantino seconded.

16
17 S. Bonczar said they were voting to deny the request.

18
19 J. Dargie said, referring to #2019-07A

20
21 **Vote to deny:**

22
23 **T. Steel – yes**

24
25 **R. Costantino – yes**

26
27 **J. Dargie – yes**

28
29 **M. Thornton – yes**

30
31 **S. Bonczar – yes**

32
33 S. Bonczar said on Buttermilk Falls it was a unanimous decision to deny the motion for rehearing.

34
35 S. Bonczar asked for a motion, re Kaplan, LCimino, LLC, to approve the request for rehearing. No
36 motion. He said that died.

37
38 S. Bonczar asked for a motion to deny the request for rehearing from Kaplan, LCimino LLC #2019-7B.

39
40 J. Dargie made a motion.

41
42 R. Costantino seconded.

43
44 **Vote to deny:**

45
46 **M. Thornton - yes**

47
48 **T. Steel – yes**

1 **R. Costantino – yes**

2

3 **M. Thornton – yes**

4

5 **S. Bonczar – yes**

6 S. Bonczar said both requests for rehearing Case #2019-07, Ogie Brewing, had been denied by unanimous
7 vote.

8

9 J. Dargie mentioned the second vote should be noted as for #2019-07B.