

City of Rochester Zoning Board of Adjustment

Wednesday March 13, 2024

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on April 10, 2024)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

Matthew Winders

Members Absent

Michael King, excused

Alternate Members Present

Brylye Collins

Stephen Foster

Laura Zimmerman

Staff: Shanna B. Saunder, *Director of Planning & Development*

Crystal Galloway, *Planner I*

These minutes serve as the legal record of the meeting and are in the format of an overview of the Zoning Board of Adjustment meeting. It is neither intended nor is it represented that this is a full transcription. A recording of the meeting is on file online at <http://www.rochesternh.gov/> for a limited time for reference purposes.

Chair Larry Spector called the meeting to order at 7:00 p.m.

The recording secretary, Crystal Galloway, conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be Mr. Powers, Mr. Connor, Mr. Winders, Mr. Foster and himself.

4. Approval of Minutes:

A motion was made by Mr. Powers and seconded by Mr. Winders to approve the minutes from the February 14, 2024 meeting. The motion carried unanimously by a voice vote.

5. New Cases:

Z-24-08 Kevin Coppinger Seeks a *Variance* from Table 19-A to permit the construction of a garage within the front setback.

Location: 60 Stillwater Circle, Map 261 Lot 57 in the Agricultural Zone.

Applicant Kevin Coppinger explained he is requesting permission to build a garage located on the side of the property. He said currently the setback prohibits him from placing the garage on the property.

Mr. Coppinger read the variance criteria. He said granting the variance would not be contrary to the public interest because the property line starts so far back from the pavement that passersby will presume it meets setback as it will not provide a sense of non-conformity. The spirit of the ordinance is to create uniformity along the roadway and building placement. There are at least four other homes within the subdivision that already have encroachment, thus the requested accessory structure will conform. Granting the variance will not detract from public value, where as denial will negatively impact me as the homeowner. Surrounding neighbors are supportive and do not indicate that they have any issue with the placement. Additionally, having a structure for vehicles, storage, and other items will create a more aesthetically pleasing view for abutters. If the garage was set 20-feet back, it would render the side yard useless for any other aspect. It would impact the septic system placement and create an unreasonable situation regarding the use of the property and may cause crowding with abutters. It is reasonable to want a garage and it is also reasonable for me to create one that is slightly larger than the size allowed by special exception. Having a garage will benefit myself, my neighbors, and the community as a whole and the lot shape, boundary line location and the location of the house and septic within the lot create a scenario with limited placement options.

Mr. Foster suggested moving the existing shed so the garage could be placed in a location to meet the setback. Mr. Coppinger explained the septic system is located in that area.

Mr. Powers agreed with Mr. Foster further saying if the applicant squared off the proposed garage instead of having it at an angle as shown on the provided plan it would fit within the setback.

Mr. Coppinger explained he has measured it numerous times and cannot make it work due to the leach field.

Ms. Saunders said A variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance of special conditions of the property and that these special conditions make it different from any other property in the area. Or when the prohibited use does not serve the public purpose of the zoning ordinance. Staff feels there are no unique or special characteristics of the property that make it different from any other property in the zoning district.

Mr. Spector opened the public hearing.

Dwain Lozier of 63 Stillwater Circle said part of the attraction to living in the neighborhood is the open green space. He said if more variances are granted to permit construction that takes away from the open space within the neighborhood it would detract people from the entire neighborhood.

Karen Coppinger of 60 Stillwater Circle said the proposed garage will not interfere with the green space. She said there is a tree line that separates their property from the open green space.

There was no one further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board to deliberate the criteria.

Mr. Winders said he doesn't feel there is a hardship because the property doesn't have any distinguishing characteristics from any other property in the area and therefore does not meet the necessary steps to be granted a variance.

Mr. Connor agreed and added the applicant could arrange the garage a different way to make it fit and meet setbacks, in the spirit of the ordinance.

A motion was made by Mr. Connor to deny case Z-24-08 citing the hardship criteria has not been met. Mr. Winders seconded. The motion carried unanimously by a roll call vote.

Z-24-09 Philip Pelletier Seeks a *Variance* from Table 19-A to permit construction of a shed 4-feet from the property line where 20-feet is required.

Location: 7 Silver Street, Map 120 Lot 13 in the Residential-2 Zone.

The applicant Philip Pelletier explained he has been living at this address since 1975 and he is proposing to install an 8-feet by 6-feet tall shed located along the back property line. He went on to explain his property is 28-feet wide by 54-feet long.

Mr. Pelletier read the variance criteria. He said the variance would not be contrary to the public interest because construction of the shed would not impact the public due to its small size. The minimal size will ensure the spirit of the ordinance is observed. Substantial justice would be done because storage of yard work equipment would increase safety. The values of the surrounding properties would not be diminished because the small size of the only requires one day for installation. Denial of the variance would result in an unnecessary hardship because the shed would be in the middle of the yard which proposes more obstacles when using equipment causing a safety issue. The structure will be in a fenced in yard, and there will be nothing making loud noises.

Ms. Saunders said many of the lots in this neighborhood have large structures on small lots. It appears that may be a hardship. Staff also feels the variance is in keeping with the surrounding neighborhood, and is in the spirit of the ordinance, and recommends approval.

Mr. Powers clarified there is an existing 6-foot vinyl fence, and the shed will be located 4-feet from it. Mr. Pelletier said that was correct.

Mr. Spector opened the public hearing.

Ms. Saunders read the following email:

Hello, I am responding to case number Z-24-09. I have no objections or concerns about the applicant, Mr. Phillip Pelletier locating a storage shed near my property line. He and his family have been excellent and considerate neighbors for several decades. Bruce Jolin, 10 Heaton Street, Rochester, NH.

There was no one further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board to deliberate the criteria.

Mr. Winders said he agreed with what the applicant presented for criteria one through four. He said because of the uniqueness of the small lot and the size of the proposed structure is enough to satisfy the hardship criteria.

A motion was made by Mr. Winders to approve case Z-24-09 as presented citing all the criteria has been met, including the hardship based on the large house footprint on the small lot. Mr. Connor seconded. The motion carried unanimously by a roll call vote.

Z-24-10 Green Mountain, LLC/ Chick-fil-A Seeks a *Special Exception* from Table 18-A and Section 22 to permit a food stand.

Location: 160 Washington Street, Map 130 Lot 38 in the Highway Commercial Zone.

The applicant Britni Riopel read the special exception criteria. She said the location is an appropriate site for the proposed use because it is a large parking lot and they would park in the area that is not utilized by the business. The proposed food truck is not detrimental, injurious, obnoxious, or offensive to the neighborhood because they do not disturb the peace and practice business respectfully. There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because they will dispose of water and waste at their home base. They will also have the guests safely line up on the sidewalk that they will be parked next too. Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use because they will provide the needed equipment and space for staff. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because they tend to bring business and smiles to the Rochester community.

Mr. Connor asked where the food truck would be parked. Ms. Riopel explained the truck will be in the large parking lot by Lowe's and will take up approximately three parking spots with the service window facing the sidewalk.

Ms. Saunders said staff feels the applicant meets the special exception criteria.

Ms. Saunders asked how they handle trash waste. Ms. Riopel said they have a trash disposal on site which they will take with them at the end of the day.

Mr. Spector opened the public hearing. There was no one present from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board to deliberate the criteria.

Mr. Powers said he felt the applicant met all the criteria for a Special Exception.

A motion was made Mr. Powers to approve case Z-24-10 as presented citing all criteria has been met. Mr. Foster seconded. The motion carried unanimously by a roll call vote.

Z-24-11 Matthew Hilgendorf & Michelle Ciani Seek a *Variance* from Table 19-A to permit construction of an accessory dwelling unit using the same footprint as the previous structure.

Z-24-12 Matthew Hilgendorf & Michelle Ciani Seek a *Special Exception* from Section 23.2.A(1)(a) to permit a detached accessory dwelling unit.

Z-24-13 Matthew Hilgendorf & Michells Ciani Seek a *Variance* from Section 2.2 to permit a Dwelling, Two Family to no occupy its own individual lot.

Location: 8 Trestle Road, Map 104 Lot 39 in the Residential-2 Zone.

The Board opened the three cases for this property in order to have one discussion.

The applicant's representative Melinda Callahan-Evans explained the applicant would like to build an independent detached dwelling using the same setbacks as a previous garage. She said due to its condition the garage had to be demolished as a condition in the homeowners insurance coverage. The request to use the same setbacks as the original structure is necessary due to the distribution of the land according to the "L" shape of the lot, and the position of ledge. It is not feasible to build on any other site and meet the current setback requirements. In the R2 zone multifamily properties as well as accessory dwelling units are permitted. Building a new structure to replace the old one will support the value of neighboring properties. The overall physical appearance of the property will be enhanced and there is no negative impact to the public interest. There will be no impact in terms of noise or traffic. There is ample space for parking for both the main house and the future house.

Adding a living unit responds to a growing demand for housing in the area, as evidence by multiple approved apartment projects in downtown Rochester and along Route 11.

Ms. Callahan-Evans read the variance criteria. She said building a dwelling to replace a dilapidated and non-functional structure is a capital improvement and therefore directly in support of the public interest. The look of the neighborhood is enhanced without altering its essential character. This is a residential proposal for a residential area and will not threaten public health. Safety, or welfare, or otherwise injure "public rights". Ample off-street parking is available on the property. The new structure will respect the same setbacks of the structure that it is replacing. The previous structure, removed in November 2023, was over 80 years old and occupied an area of the lot that is the only logical place for a structure. We want to replace it in order to preserve the integrity of the property. This project does no harm that we can think of to the general public or to other individuals, including abutters. It has no measurable impact on traffic, noise, or in any category. Granting the variance will allow for the replacement of a structure that was in dire need of replacement. Further, the two houses directly across the street are two-family dwellings. Building a dwelling in the location where the garage was located would not alter the character of the neighborhood and would be consistent with other properties in the area. Lastly, we understand that adding a dwelling to the City of Rochester is an important component of expanding the availability of housing in the state.

If the variance is granted, the values of the surrounding properties would not be diminished, in fact, a positive impact on the surrounding properties. Updating and replacing structures are investments that contribute positively to the look of the neighborhood and should lead to an increase in property values for all houses in the immediate area. The lot is sizable at .37 acres but given the "L" shape of the property and the location of the main house, it is not possible to build the structure in any other location in conformance with the setback requirements. We have no choice but to request a variance. We are pursuing the most logical solution which is to use the footprint of the original structure. The variance is necessary to enable a reasonable use of the property and denial would leave us without any option for rebuilding the structure. We are requesting the variance out of necessity, not choice.

This is a residential project for a residential area with no conflict between the public purposes of the ordinance provision and the specific application.

Mr. Foster said the old structure was approximately 480 square feet and the proposed structure is 720 square feet plus it's going to be an accessory dwelling unit. He said he doesn't see there is a hardship, just an opportunity for the applicant to make some extra money.

Mr. Foster asked if the applicant lives in the main residence. Ms. Callahan-Evans said they do not.

Mr. Spector opened the public hearing.

Daniel Levesque of 6 Raab Lane said the previous garage was a great buffer between the two properties. He said the applicant approached him about building a new garage which he said he wouldn't mind but once the applicant mentioned adding a dwelling unit it changed things. Mr. Levesque said he owns a multifamily unit and there are several others in the neighborhood, and they are not opposed to multifamily units however, what the applicant is proposing is right on the property line. Mr. Levesque said there are parking issues on the street that needs to be taken into consideration also.

Jill Monbleau of 15 Trestle Road said the structure that was torn down was a barn/garage, not a dwelling. She said it's impossible to speculate about traffic and noise right now because there is no one living at the property right now. Ms. Monbleau said there is a lot of on street parking which is an issue, especially during the winter. She said her biggest concern is that the property owners do not live there.

Kathy Levesque of 6 Raab Lane said that she heard that they are proposing to construct a duplex in the corner of the property. She said as an experienced landlord she knows one single individual that doesn't know how to be a neighbor can really change the quality of life in the neighborhood.

Ms. Levesque said in speaking with the applicant he made it seem like the proposal was to add an in-law apartment, meaning they would be living in one of the units.

Ms. Callahan-Evans clarified they are proposing to build one unit. There will be a garage under with a dwelling unit above it.

Mr. Powers said the verbiage they used is tearing down a structure and proposing to build a new structure, and it's good for the community and value. He said building a duplex is a choice, not a necessity as stated.

Ms. Saunders explained the first variance is for setbacks so the Board should not look at use when voting, the request is to build a structure within the setback. She said if the Board approves the variance to allow the structure to be built, then the use will be looked at for the special exception and the second variance request. Ms. Saunders said please remember financial considerations may not be a reason to grant a variance. It appears on the lot that there may be other areas to construct this structure that would be out of the setback. If the variance is granted, Staff recommends the Board require the applicant to have the parcel surveyed. The GIS shows this original structure may have been originally built over the property line.

Ms. Saunders said based on the criteria for an accessory dwelling unit staff feels the applicant meets the criteria for a special exception.

Ms. Saunders explained the second variance request for a detached duplex is an odd request. She explained there is no hardship for this, and this is also a very bad precedent to set. Single family homes and duplexes are required to be on their own lot where they are permitted to prevent overcrowding of land along with the overarching general ideas of traffic congestion, health and general welfare, etc. Staff feels they have not met several of the criteria including hardship, spirit of the ordinance, public interest and substantial justice.

Daniel Levesque of 6 Raab Lane explained he had his property surveyed and the applicant used the plan to create the sketch that is in the Board's packet.

Kathy Levesque of 6 Raab Lane explained when you look at the plot plan for the lot it looks like there would be other alternatives for the location of the structure. She said there is ledge on the property so it's not buildable.

There was no one further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board to deliberate the criteria.

Mr. Winders said he feels the applicant has met the criteria for the first variance in regards to the setbacks. He said it is a unique lot and with the information provided regarding ledge on the property.

A motion was made by Mr. Winders to approve case Z-24-11 for the structure within the setback citing all criteria has been met. Mr. Connor seconded. The motion carried by a 4 to 1 roll call vote. Mr. Spector opposed.

Ms. Callhan-Evans read the special exception criteria. She said the site is an appropriate location for the proposed structure because it replaces a previously existing structure and takes advantage of an existing driveway. It also avoids disrupting an area of nature woodland that is valuable to the neighborhood and making this a detached structure protects the integrity of the main house of historical value. The proposal replaces a structure with something new and will support the aesthetics of the neighborhood. The two houses directly across the street are two-family dwellings, so this proposal does not alter the character of the neighborhood. There is plenty of room on the 0.37 acre lot for parking for both the current house and the proposed detached dwelling. There will not be any impact on pedestrian or vehicular traffic. The structure will access city utilities including electricity, gas, water, and sewer. The property is located in residential-2 area with neighbors that are duplexes and/or have accessory dwelling units. This proposal is to replace an old structure with a new one and does not have any impact on the master plan.

Mr. Spector opened the public hearing.

Jill Monbleau of 15 Trestle Road asked for clarification because the applicant's representative stated there was going to be a garage with an apartment above it. She said the application never states there will be a garage, it only speaks to a dwelling.

Ms. Saunder said staff feels the applicant has met the special exception criteria for an accessory dwelling unit.

There was no one further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board to deliberate the criteria.

Ms. Saunders read the criteria for an accessory dwelling unit including the applicant must occupy one of the units. Mr. Powers said if it states the owner must occupy one of the units he feels this proposal does not qualify. Ms. Saunders explained it could be approved with the condition one of the units must be occupied by the owner.

Ms. Saunders said if there are questions the Board could ask the applicant to come back to assure them the unit will be owner occupied.

A motion was made Mr. Powers to continue case Z-24-12 to the April 10, 2024 meeting to allow the applicant to be present to answer questions about eh accessory apartment criteria. Mr. Winders seconded. The motion carried unanimously by a roll call vote.

A motion was made by Mr. Winders to continue case Z-24-13 to the April 10, 2024 meeting to allow the applicant to be present to answer questions about the request. Mr. Powers seconded. The motion carried unanimously by a roll call vote.

6. Review of Bylaws

Ms. Saunders explained that at the retreat meeting, presenter Steven Buckley brought up the topic regarding the role of alternate members. She said his recommendation was to allow alternate members to speak up to the close of the public hearing. Ms. Saunders explained at the recommendation of legal counsel alternate members have always been able to speak up until the time a motion is made.

Mr. Spector said he wants the alternate members to be involved during all discussions of the meeting, not just with the applicant but with the entire Board.

Saunders said they would amend the bylaws and bring back a copy for approval at the next meeting.

7. Other Business/Non-Scheduled Items:

There was no other business to discuss.

8. Adjournment:

A motion was made by Mr. Connor and seconded by Mr. Winders to adjourn at 8:06 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development