



City of Rochester, New Hampshire

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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF DECEMBER 14, 2016 (Approved as amended February 8, 2017)

The Chair called the meeting to order at 7:00 p.m. in the Council Chambers.

Roll Call:

Roll call was taken with the following members present:

Members Present

Ralph Torr, Chair
Larry Spector, Vice Chair
Robert Gates
Randy Lavallee
Robert Goldstein
Fidae Azouri, Alternate

Members Absent

Leo Brodeur, Alternate-Excused

Also present: Joe Devine, Zoning Compliance Officer, City of Rochester
Karen L. Grenier, Building, Zoning & Licensing Secretary

These minutes are 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 in the Building Zoning and Licensing Office for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of November 9, 2016 were reviewed. Mr. Gates made a motion to accept the draft minutes as proposed. Mr. LaVallee seconded the motion.
The motion passed unanimously by roll call vote.

The Chair asked if board members had any conflict with tonight's case. There were no conflicts. Chair Torr stated the regular members present would be voting on the cases.

New Cases:

2016-31 Mr. Leo Yelle, Manager for Columbus Ave. Freight House, Inc, requests a Variance to the terms of Article 42.29, K. Table on page 205 of the Zoning Ordinance. That said terms be waived allow a digital freestanding sign where one is not allowed in the Downtown Commercial Zone.

Location: 250 Columbus Ave., 0120-0319-0000, Downtown Commercial Zone

Chair Torr read the case details, and asked who was presenting the case.

Mr. Leo Yelle approached the podium and spoke about the variance and need for the new sign. The existing sign is dangerous to change information on it as they need to climb on a roof to do so. Chair Torr asked if the board members had any questions. The board members discussed the case. Mr. Goldstein stated the intersection was too busy for the sign. Mr. Spector spoke against the sign as well. Chair Torr asked Mr. Devine for the City's view. Mr. Devine stated the applicant has failed to show a reason for a hardship. There are other types of signs that can be placed on this property without having them be electronic and changeable. If the board does approve this variance, please consider limiting the change of the copy to hours as opposed to eight seconds as given by ordinance. Time allowed to operate the sign should also be considered do to the close proximity to residential houses. The Chair asked Mr. Yelle to read the five criteria answers.

The Chair closed the public hearing portion of the meeting and the board members worked on the criteria sheets.

Mr. Gates motioned to grant the variance as presented for the following reasons: The variance will not be contrary to the public interest because: It will not increase congestion in the streets. The spirit of the ordinance is observed because: It will not negatively impact health and the general welfare. If grant, the benefit to this individual applicant, outweighs any harm to the community as a whole. The value of the surrounding property will not be diminished because: The hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Lavallee seconded the motion. The motion passed by a three to two vote of the voting members.

The Chair then stated if anyone was directly affected by this decision they have thirty days to appeal.

2016-32 Mr. Bill Powers applicant, request a Variance to the terms of Article 42, Table 19-A ask that said terms be waived, to permit a garage addition 1 ½ ft. from the property line, when 10 ft. is the set back in the Residential One Zone.

Location: 69 Franklin St., 0119-0116-0000, Residential One Zone.

Chair Torr read the details of the next case and asked who was presenting.

Mr. Bill Powers approached the podium and spoke about his case, he then read the five criteria for the variance request. Chair Torr asked the applicant if the lot had been surveyed. Mr. Powers stated the lot had not been surveyed. The applicant submitted a waiver to the certified site plan. The board members discussed the requirement of that, and discussed the addition being on sonotubes as opposed to a permanent foundation. The Chair asked for a motion to accept or not accept the waiver. Mr. Goldstein motioned that a surveyed site plan be required. Mr. Lavallee seconded the motion. The vote was stated a yes vote would require a certified site plan and a no would not. The vote to provide a certified site plan failed, by a vote of three to two of the five voting members. Chair Torr asked the applicant to read the five variance criteria.

The Chair asked Mr. Devine for the City's view. Mr. Devine stated "the applicant does not meet the requirement for a hardship. The hardship being listed pertains to the owner and is not specific to the property. There are other options available to the applicant; such as adding on the rear of the garage or add a shed to hold the equipment."

The Chair closed the public hearing portion of the meeting and the board members worked on the variance criteria sheets.

Mr. Gates motioned to approve the variance as requested for the following reasons: The variance will not be contrary to the public interest because: It will not increase congestion in the streets. The spirit of the ordinance is observed because: It will not negatively impact health and the general welfare. Substantial justice is done because: If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of surrounding properties will not be diminished because: it will not generate levels of noise, light, activity or traffic that are significantly different from that which currently exists.

Mr. Spector seconded the motion. The motion passed with of vote of three to two of the five voting members.

Mr. Devine stated if anyone was aggrieved by this decision they have thirty days to appeal from today's date.

2016-33 Mr. Stephen Brochu applicant, request a Variance to the terms of Article 42.19, b16 ask that said terms be waived, to permit an amendment to a previously approved lot line in the Agricultural Zone.

Location: 18 Stephens Dr., 0236-0043-0000, Agricultural Zone.

Chair Torr read the details about the case then asked who was presenting.

Mr. Kerry Fox representative for Mr. Stephen Brochu the applicant, both approached the podium. Chair asked if there was anyone from the audience to speak for or against this case, no one came forward. Chair asked if the board members had any questions, they did not.

Chair Torr asked for the City view on this case. Mr. Devine stated "the applicant is modifying an existing approved variance." The board has already determined hardships for this property and it would be inconsistent if it was denied." Chair Torr asked Mr. Fox to read the five criteria for the case. Chair Torr asked if there were any more questions. He then closed the public hearing portion of the meeting and the board members worked on the criteria sheets.

Chair Torr asked for a motion on the case. Mr. Gates motioned to approve the variance as requested for the following reasons: The variance will not be contrary to the public interest because: It will not exacerbate the overcrowding of land. The spirit of the ordinance is observed because: It will not increase congestion in the streets. If granted, the benefit to this applicant outweighs any harm to the community as a whole.

The value of the surrounding properties will not be diminished because: It will not be visible from the street. Mr. Lavalley seconded the motion. The motion passed unanimously by roll call vote.

Mr. Devine stated if anyone was aggrieved by this decision they have thirty days to appeal from today's date.

2016-34 Mr. Joseph Vachon applicant, request a Variance to the terms of Article 42, Table 18-C, ask that said terms be waived to permit Health/ Fitness Club in the Industrial Zone.

Location: 16-18 Amarosa Dr., 0205-0002-0000, Industrial Zone

Chair Torr read the details about the case and asked who was representing the case.

Mr. Joseph Vachon and Mr. Dave Levesque business partners, approached the podium to read the variance narrative explaining the business. Chair Torr asked board members if there were any questions. There were none.

Chair Torr asked if there was anyone from the audience to speak for the case. Ms. Lisa Amarosa owner of the building approached the podium to speak in favor of the case. The real estate agent, Ms. Laura Farago then approached the podium to speak in favor of the project, stating this was a perfect use and business for Rochester. Chair Torr asked if there was anyone present to speak against the case and no one came forward. Chair Torr asked the board members if they had any questions. They did not. Chair asked what the City's view on this was. Mr. Devine stated "the applicant has not shown a hardship that is unique to this property. The proper way to address this would be through an ordinance change".

The Chair closed the public hearing portion of the meeting and the board worked on the criteria sheets.

Mr. Gates motioned to approve the variance as requested for the following reasons: The variance will not be contrary to the public interest because: It will not negatively impact health and the general welfare. The spirit of the ordinance is observed because: It will not exacerbate the overcrowding of land. If granted, the benefit to this individual applicant, outweighs any harm to the community as a whole. The value of surrounding properties will not be diminished because: The hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Lavallee seconded the motion. The motion passed unanimously by roll call vote.

Mr. Devine stated if any person is affected directly by this decision they have thirty days from today to appeal.

2016-35 Lisa & Allen Littlefield applicants, request a Variance to the terms of Article 42, Table 19-A, ask that said terms be waived to permit a lot line revision that will create reduction of frontage and land area between 115 and 107 Salmon Falls Rd.

Location: 115 & 107 Salmon Falls Rd, 0210-0144-0000, and 0210-0143-0000, in the Agricultural Zone.

Chair Torr asked who was representing this case. Mr. Christopher Berry agent for the applicant, approached the podium to address the board, respectfully requests to withdraw the case without prejudice, after conversation with the Code Enforcement Officer.

2016-36 Alexx Monastiero, Real Estate Advisors applicant, request an Appeal of Administrative Decision to terms in Article 42.33, Section C (3), for reduced frontage to allowed uses.

Location: 24 Jeremiah Lane, 0223-0021-0000, in the Agricultural Zone.

Chair Torr read the details of the case and then asked who was presenting the case.

Ms. Alexx Monastiero approached the podium and presented her case. Ms. Monastiero is trying to achieve a reduced frontage for the duplexes in this subdivision. Alexx explained a conservation subdivision is a condensed development to preserve fields and parcels and preserve the use of surrounding open land. The duplex frontages as understood by the applicant is 60 feet. Mr. Grant's interpretation is 150 ft frontage for the duplexes.

The board members discussed the details of the appeal and wanted to postpone until they had more time to review. In discussion of the case the board members questioned a hardship with this appeal. Mr. Grant approached the podium again to suggest skipping the administrative appeal and move forward to the variance. Board members further discussed the appeal. Mr. Grant approached the podium again to try to explain more details and he also

stated this ordinance is very grey. He suggested an ordinance change would be needed to correct this situation.

Mr. Spector made a motion to postpone this appeal to the January 11, 2017 meeting.

Mr. Gates seconded the motion. The board approved this motion by roll call vote of all the voting members. Mr. Berry suggested according to the staff this evening suggested hearing the variance for 24 Jeremiah Lane tonight.

The Chair asked the City view.

Mr. Joe Devine stated Mr. Grant's decision was city view. Now because of the appeal decision the variance cannot be heard tonight. The board members shared a lot of discussion according to the appeal case 2016-36 and the variance case 2016-37 as each is for the same location, 24 Jeremiah Lane.

The board members decided to hear the variance submitted by Alexx Monastiero for 24 Jeremiah Lane, case 2016-37.

2016-37 Alexx Monastiero, Real Estate Advisors applicant, request a variance to the terms Article 42.33, Section C (3) reduced frontage to allowed uses.

Location: 24 Jeremiah Lane, 0223-0021-0000, in the Agricultural Zone

Alexx approached the podium and read the five criteria for the case. The board members discussed the variance case. The board decided to rescind the vote taken earlier on case 2016-36. Mr. Gates motioned to rescind the vote taken earlier on case 2016-36. Mr. Lavallee seconded the case. The motion passed unanimously by roll call vote. The Chair opened the meeting to the public for case 2016-37. No one came forward to speak in favor of the case. No one from the audience came forward to speak against the case. The board members then worked on the criteria sheets.

Mr. Gates motioned to grant the variance as requested for the following reasons: The variance will/ will not be contrary to the public interest because: It will not compromise the provision of adequate light and air. The spirit of the ordinance is observed because: It will not negatively impact health and the general welfare. If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of surrounding properties will not be diminished because: The hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic.

Mr. Devine stated if any person is affected directly by this decision they have thirty days from today to appeal.

Chair Torr then stated there was one more item on the agenda.

Rochester City Council's Motion for Rehearing presented by the City Attorney

Terence O'Rourke for Case 2016-21- Donald & Bonnie Toy, 418 Old Dover Rd., 0256-0054-0001, Merge Lot 53 for Addison Estates Expansion.

Chair Torr asked for a motion on the request. Mr Gates motioned not to rehear the case. Mr. Lavallee seconded the motion. The motion passed not to rehear case 2016-21 with a vote of four (4) to one (1) of the voting members.

Adjournment:

Mr. Spector motioned to adjourn. Mr. Lavallee seconded the motion. The motion passed unanimously by roll call vote. The meeting adjourned at 8:47 pm.

Respectfully submitted,

Karen L. Grenier, Building, Zoning & Licensing Secretary