



## City of Rochester, New Hampshire

### Building, Zoning & Licensing Dept.

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### MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF August 9, 2017

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

#### **Roll Call:**

The Zoning Secretary conducted the roll call.

#### Members Present

Lawrence Spector, Vice Chair

Randy Lavallee

Robert Gates

Robert Goldstein

Shon Stevens, Alternate

Leo Brodeur, Alternate

#### Members Excused

Ralph Torr, Chair

Also present: Jim Grant, Director of Building, Zoning and Licensing Services  
Julia Libby, Secretary of Building, Zoning, and Licensing Services

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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 and online at [www.rochesternh.net](http://www.rochesternh.net) for a limited time for reference purposes. It may be copied for a fee.

#### **Approval of Minutes:**

The minutes of June 14, 2017 were reviewed, Mr. Goldstein made a motion to accept the minutes with amendments, Mr. Brodeur seconded the motion. The motion passed unanimously by roll call vote.

The Vice Chair asked if any of the board members had any conflict with tonight's case. There were no conflicts.

## **New Cases:**

Mr. Spector stated that Mr. Stevens would be voting as well as the other four regular board members for the first case.

**2017- 03** Monarch School of New England applicant, request a variance to permit a 60" w X 50" h sign in an R2 district. According to said terms Article 42.29, section N.1.

**Location:** 13 Monarch Way Rochester, NH 03867, 0110-0110-0000, in the Residential 2 zone.

Susan Deroy approached the podium and briefed the board about the case in representation of the Monarch School of New England.

Vice Chair Spector asked the board members if they had any questions. Mr. Brodeur asked if the sign would be a message board, it was stated that it wouldn't be an electronic message board but a message board that is manually changed for different events taking place.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case. Francis Zombeck, an abutter approached the podium. He voiced his concern about the sign blocking people's view.

Mr. Stevens asked where the sign would actually be placed. Ms. Deroy brought a map up to point out where it would be located.

Vice Chair Spector asked for the city's opinion. Mr. Grant stated that himself, Joe Devine (City Compliance Officer), and Terrence O'Rourke (City Attorney) feel that the applicant does meet all the five areas of criteria for a variance. He then touched on all five areas pertinent to the case. He referenced a court case, *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, to support the City's opinion.

Mr. Spector closed the public hearing portion of the meeting and the board worked on their variance criteria sheets.

Mr. Spector asked for a motion. Mr. Gates motioned to grant the variance for the following reasons: The variance 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 the 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. Lavallee seconded the motion. The motion carried unanimously.

Mr. Grant advised that anyone aggrieved by this decision has 30 calendar days to appeal.

**2017- 04** Monarch School of New England applicant, request a variance to permit a 60”w X 50” h sign in an R2 district. According to said terms Article 42.29, section N.1.

**Location:** 61 Eastern Ave Rochester, NH 03867, 0112-0020-0000, in the Residential 2 zone.

Mr. Spector stated that voting members would be the four regular, and that Mr. Brodeur would vote.

Vice Chair asked Ms. Deroy to approach the podium. She stated that she presented both cases the first time. She pointed out that one application is for 61 Eastern Avenue, which is the elementary school, and that the other on 13 Monarch Way is for the high school and vocational center. She briefed the board that Monarch School would like them to be similar in nature but be able to identify which is which.

Mr. Spector asked if there was anything from the City and Mr. Grant stated that it would be the same exact comments as before.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case, and no one came forward.

Vice Chair Spector closed the public hearing portion of the meeting and the board worked on their variance criteria sheets.

Mr. Spector asked for a motion. Mr. Gates motioned to grant the variance 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 compromise the provision of adequate light and air. If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of the 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. Lavallee seconded the motion. The motion carried unanimously.

Mr. Grant advised that anyone aggrieved by this decision has 30 calendar days to appeal.

**2017- 05** Joshua Guptel, applicant, for a Special Exception to allow a comedy club (defined as a nightclub) in the Downtown Commercial zone, according to Article 42.2, table 18-C.

**Location:** 12 Union St Rochester, NH 03867, 0121-0393-0000, in the Downtown Commercial zone.

Mr. Guptel approached the podium and briefed the board about his intent and said that he can answer any questions pertinent to the exception.

Mr. Spector asked the board if they had any questions. Mr. Brodner asked what the hours of operation would be. Mr. Guptel informed the board that on the weekends doors would open around 7:00 pm, shows are hoping to be done around 10:30 pm, with the hopes to be closed and out of the building by 11:00 pm. He said that weekdays would be a little earlier since they are offering youth classes. Mr. Brodner asked if they would be selling alcohol, they will. Mr. Goldstein asked what type of classes would be held, and Mr. Guptel responded that they would be stand-up comedy classes for youth.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case. Chris Redman approached the podium and stated that he lives directly next door at 14 Union St. He expressed that his biggest concern is that his driveway goes between the properties and he is concerned with the amount of riffraff entering his driveway, and people throwing cigarette butts. He said that there are no businesses open on the street past 6 o'clock and having something open later is detrimental to his property.

There was then some discussion about what business was at this property before.

Mr. Spector asked if there was anything from the City and Mr. Grant stated that the city would like to point out that no hardship needs to be proved and that they are just looking for the five conditions of a Special Exception. He stated that the city does agree with the applicant that it is a very good fit for the downtown business and remains consistent with what we currently have in the zone.

Mr. Gates moved that special exception be granted as presented. Mr. Lavalley seconded. The motion passed unanimously by the voting members.

Mr. Grant advised that anyone aggrieved by this decision has 30 calendar days to appeal.

**2017- 06** Fenton Groen, applicant, for a Special Exception to allow a 12' satellite antennae to be installed to accommodate a small radio station. This satellite is considered a Wireless Communications Facility, which is allowed by Special Exception in the Highway Commercial zone, according to Article 42.22 section c.14, and per table 18-D.

**Location:** 120 Washington St Rochester, NH 03867, 0123-0065-0000, in the Highway Commercial zone.

Mr. Spector stated that voting members would be the four regular, and that Mr. Brodeur would vote.

Mr. Groen approached the podium and briefed the board about what the satellite would be used for, what it would do, where it would be located, and why.

Vice Chair Spector asked the board if there were any questions. Mr. Brodeur asked the applicant how long the dish would be required. Groen stated that they have a contract that is a minimum of 3 years and a maximum of 20 years. Mr. Brodeur asked if they would be removing the dish if the radio station moved out, and Mr. Groen said that they would.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case, and no one came forward.

Mr. Spector asked if there was anything from the City and Mr. Grant said same thing, this is a five prong test and that the city feels that the applicant meets them all.

Mr. Gates moved that special exception be granted as presented. Mr. Goldstein seconded. The motion passed unanimously by the voting members.

Mr. Grant advised that anyone aggrieved by this decision has 30 calendar days to appeal.

**Other Business:**

Mr. Spector asked if there was any other business.

Mr. Goldstein asked what the status of the board's court proceeding was. Mr. Gates responded that the objection by the city went to court and that Chair Torr and he sat in on a case for an hour or so one morning and that the Judge presently has it under consideration. He said he asked the City Attorney when they may receive a decision, and wasn't told a definite answer considering it is a civil case.

**Adjournment:**

Vice Chair Spector asked for a motion to adjourn. Mr. Gates motioned to adjourn the meeting, Mr. Lavallee seconded. The motion carried unanimously.

The meeting adjourned at 7:37 pm.

Respectfully submitted,

*Julia Libby*

Julia Libby, Secretary of Building, Zoning, and Licensing Services