



## PLANNING & DEVELOPMENT DEPARTMENT

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Planning & Zoning  
Community Development  
Conservation Commission  
Historic District Commission  
Arts & Culture Commission

### MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF APRIL 10, 2013 (Approved May 8, 2013)

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  
Lawrence Spector, Vice Chair  
Robert Gates  
Peter Meyer  
Fidae Azouri, Alternate  
Robert Goldstein, Alternate  
Rose Marie Rogers, Alternate

#### Member Excused

Randy Lavallee

Also present: Kenn Ortmann, Director, Planning & Development Department  
Caroline Lewis, Zoning Secretary

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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 Planning & Development Office for a limited time for reference purposes. It may be copied for a fee.

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

The minutes of March 13, 2013 were reviewed. Mr. Gates made a motion to accept the minutes as written, Mr. Spector seconded the motion. The motion passed unanimously by roll call vote.

The Chair asked if members had any conflict with tonight's case. Mr. Meyer stated he had a conflict with Case 2013-14. The Chair stated the following alternates would fill in for excused member Mr. Lavallee. Ms. Rogers will vote on Case 2013-09, Mr. Goldstein on Case 2013-10, Ms. Rogers on Case 2013-11, Mr. Azouri on Case 2013-12, Mr. Azouri and Mr. Goldstein (for Mr. Meyer) on Case 2013-14 and Mr. Azouri on Case 2013-15.

## **New Cases:**

### **2013-11**

The Chair noted that the applicant of Case 2013-11 has requested the case be postponed until the May meeting. Mr. Gates made a motion to postpone this case until May 8<sup>th</sup>, 2013. Mr. Spector seconded the motion. The motion passed unanimously. Abutter letters will not be sent out again as this case was postponed to a date certain.

**2013-09** Application by Denis & Melanie Cormier for a variance under Article 42.16 Table 2 of the City's Zoning Ordinance to permit an addition 22 feet from the rear lot line and a bulkhead 15 feet from the rear lot line where 25 feet is required. **Location:** 16 Howe Street, Map 127 Lot 94 Residential 1 Zone.

Mr. Denis Cormier, applicant, addressed the Board. He stated he has been at this location for 25 years and wants to add an addition in order to be able to continue to live in the house in the years to come. The bulkhead will be 15 feet from the rear property line. Mr. Cormier asked for a waiver from having to supply a certified plot plan, as the back line is a stone wall that has been there for years. Mr. Cormier read through the five criteria.

Mr. Gates made a motion to waive the requirement to have a certified plot plan based on the information provided, and the distance into the setback will not create any problems to the abutting property. Mr. Spector seconded the motion. The motion passed unanimously.

The Chair asked if anyone wanted to speak for or against this case. No one came forward. There were no comments from the City. The Chair closed the public hearing portion of this case and the members worked on their criteria sheets.

Mr. Gates made a motion to grant this variance for the following reasons: The variance is not contrary to the public interest because it will not cause congestion in the streets, 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, and 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 unanimously.

Mr. Ortmann advised the applicant that anyone aggrieved by this decision has 30 days from today to appeal.

**2013-10** Application by Route 202, LLC for a variance under Article 42.14 Table 1 (B)(1),(6) & (9) of the City's Zoning Ordinance to permit construction and use of buildings with retail and/or office or restaurant uses which are not allowed in an Residential 1 zone. **Location:** 19 & 26 Labrador Drive, Map 130 Lots 43 & 43-1 Residential 1 Zone.

Attorney James Schulte addressed the Board. He stated his client, Route 202, LLC is requesting a variance to permit retail and/or office and restaurant use in buildings totaling approximately 32,000 square feet.

Attorney Schulte described the Exit 13 area as being a commercial area now, where 15 years ago it was residential. He noted what they are proposing is just 10% of the size of the Rochester Crossing project. He noted that at one point the property owner thought the park and ride might go on these lots, but the City diverted this project to a location further up on Rte 202.

Attorney Schulte discussed the houses on Labrador Drive, Florence & Pine being screened, noting that these residents are already impeded by the commercial sites on Rte 202, and other issues.

Ms. Rodgers stated the plans showed an extensive disregard for the wetland areas on these lots, and asked if there was any thought about mitigation of the destruction to the wetlands. Attorney Schulte replied these plans are only sketch plans and the final plans will have to accommodate these wetland concerns. He expects the re-design will respect the wetland and buffer areas.

Attorney Schulte read through the five criteria and noted this project would be a modest extension of the existing commercial sites in this area.

The Chair asked if anyone wanted to speak in favor of this variance. Ms. Karen Pollard, Deputy City Manager, Director of Economic Development Department came forward. Ms. Pollard confirmed she did write a letter to the property owner in 2009 regarding the park and ride facility and the rezoning of this area, which started 12 years ago. She stated she understands the environment has changed dramatically for this neighborhood, but feels the small scale of this project is the best balance. She discussed Rochester Crossing, adding value to the tax base, and other issues.

Councilor Alan Reed-Erickson addressed the Board. He concurs with Economic Development and is concerned with the people in this neighborhood, but time moves on and we need to think of the rest of the City.

Mr. Ortmann announced the Planning Department had received a letter that was addressed to the Planning Board and the City Council, but also had relevance to this variance.

Mr. Gates read the letter and petition that had been received from Hawthorne Law Center in Wakefield, New Hampshire against any changes in the zoning of this residential neighborhood. (the 2 page letter, 2 page petition and 20 signatures are in the case file.)

The Chair asked if anyone in the audience wanted to speak against this variance.

Councilor Dave Walker addressed the Board. He stated he is in opposition of this variance. He stated he doesn't think this project meets the five criteria, that neighborhood has been there 25 years, these lots are the only protection they have, he is trying to change the comp rezoning of this area back to R1 and other issues.

Mr. Kent Merchior, 43 Labrador Drive came forward. His comments were regarding trying to contact the Kane Company about buying the property for residential use, but Mr. Kane not wanting to talk to him or others about that. He stated the Kane Company didn't have anything to do with the water and sewer coming into the neighborhood. He spoke of property values, the wetlands, safety, pollution, noise, light, large trucks travelling on the street, and other issues. Mr. Merchior would like the Board to deny this variance and keep the residential area and keep the value of their homes from decreasing.

Mr. Lyndon Richards, 58 Labrador Drive, stated he and his wife Stacey are asking that the Board NOT grant this variance. They are concerned about increased traffic, people turning around in their driveways, the value of their home going down, and other issues. They have made major renovations to their home and feel if the Board grants this variance the value of all the houses in the neighborhood will decrease. Mr. Richards read responses he had written down in response to the five criteria. He noted they have had enough impact in that neighborhood and the commercial uses should go up on Rte 11 and leave them alone once and for all.

Mr. Gates asked about school buses going into that neighborhood. At this time none of the families have small children. Mr. Gates also asked if anyone had had their property evaluated to know what would happen if these lots are developed for commercial use. Mr. Richards feels there will be a 50 to 60 thousand dollar drop.

Mr. Richards said he is worried about being able to sell his property in the future and asked the Board to please consider denying this variance.

Ms. Pam Gelinas, 40 Labrador Drive, came forward. She stated she is now the first house on the street where she used to be the last house on the dead end street. She commented on the impact made by Rochester Crossing, the buffer of trees and wildlife currently there, the character of the neighborhood, this neighborhood backing up to the Clement conservation property, the negative effect this would have on the neighborhood, and other issues.

Mr. Walter Barstow, 2 Florence Drive, came forward. He said he has lived there since 1979 and would like to retire there. His concerns were drainage, more lights, people in the parking lots, and other issues. He hopes the Board will just leave it residential.

Mr. Everett Dupont, 5 Florence Drive, came forward. He stated he has been there over 20 years, and now he feels like he is in the middle of the City with all the traffic and lights. He said they took his privacy away with the highway ramp, the only one to gain out of this project is the Kane Company, there are already lights on 2 sides of his house, and he doesn't want drunks and noise right outside his home.

Councilor Ray Varney, Ward 1, addressed the Board. He advised the Board they are here this evening to determine if this meets the existing criteria for the Zoning Ordinance that is currently in place. He stated the burden is on the applicant to meet the criteria. Councilor Varney noted the changes would certainly change the character of the neighborhood and retail and/or restaurants may cause safety issues that could be a burden to the City. He noted the zoning variance process exists for situations if and only if the property can not be used. He feels this does not meet the criteria and even though he loves to promote commercial development throughout the City he urges the Board to examine the criteria and deny this variance.

Mr. Donald Ramsey, 12 Florence Drive, came forward. His comments were: would like to see the neighborhood stay the way it is, this would destroy the atmosphere, the area is not made for commercial use, this would be a bad move, and other issues.

Mr. Jonathan Clement, Bickford Road, came forward. He advised the Board that he and his wife Holly are in the process of putting 95 acres of land, (the property behind this neighborhood), under conservation easement. There is a natural spring that runs along Florence Drive from his property and with all the time and effort going into the conservation of this land he wouldn't want to think this water way would be going into a commercial project at the end.

Ms. Rogers asked if there were wild brook trout in this stream. Mr. Clement stated he believes there is.

Mr. Goldstein asked if others in the audience would raise their hands if they were in support of their neighbors who had spoken. (There were approximately 25 people in the audience who raised their hands)

Attorney Schulte addressed the Board. He noted how different people draw different conclusions from the same facts, and the neighborhood has gone through changes. He noted that several people confirmed that the result of the Rte 202 expansion to a six lane road and the construction of the mall has affected the entire neighborhood with lights, noise and traffic. Attorney Schulte feels this project is insignificant in relation to what has already happened. He stated it is not realistic to think the property owner would want to do a residential use there. Mr. Schulte noted with the commercial area there, people would not be continuing along Labrador Drive and turning in their driveways; they would go into the commercial lot and turn around. He stated the neighbors said there have been many changes already, and changes are going to continue. This is the next logical step.

The Chair asked for City comments. Mr. Ortmann's comment was to note these are two separate properties that may have separate issues. The City Manager agreed.

The Chair closed the public hearing portion of this case and asked for member comments. The members comments were: agreement with Councilor Varney, no hardship to owner, already have everything jammed into this neighborhood, this is not on Rte 202, but actually on Labrador Drive, don't feel this is appropriate, wetland area part of larger extensive system, and the best use would be conservation, not commercial and not residential. The Board members worked on their criteria sheets.

Mr. Spector made a motion to deny this variance for the following reasons: The variance is contrary to the public interest because it will increase congestion in the streets, and will diminish the value of buildings. The spirit of the ordinance is not observed because increase congestion in the streets, and will diminish the value of buildings. If denied, the benefit to the community as a whole outweighs any disadvantage or harm to this individual applicant. The value of surrounding properties will be diminished because it will be visible from the street, and will be visible from abutting properties. Mr. Gates seconded the motion. The motion to deny this variance passed unanimously.

Mr. Ortmann advised that anyone aggrieved by this decision has 30 days from today to appeal.

**2013-12** Application by Alan Golick bda Golick's Rochester, LLC for a variance under Article 42.8 Section (c)(2),(3)&(5) of the City's Zoning Ordinance to permit signage to be placed on a lot other than the lot the business is located on. **Location:** 161 So Main Street, Map 125 Lot 85 Business 2 Zone.

Mr. Golick, applicant, addressed the Board. He showed the members a sample of what the sign would look like and explained where on the site the

pole sign and the wall sign would be located. Mr. Golick read through the five criteria.

The Chair asked if anyone wanted to speak for or against this variance. No one came forward. The City Manager recommended the Board see a sample of the sign, which the applicant has brought to the meeting.

The Chair closed the public hearing portion of this case and the members worked on their criteria sheets.

Mr. Gates made a motion to grant the variance as presented for the following reasons: The variance is not 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 individual applicant outweighs any harm to the community as a whole, and 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. Azouri seconded the motion. The motion passed unanimously.

Mr. Ortmann stated that anyone aggrieved by this decision has 30 days from today to appeal.

### **2013-13**

Case 2013-13 Scheduled for the May 8, 2013 meeting at the request of applicant.

**2013-14** Application by Berry Surveying and Engineering for a variance under Article 42.16 Table 2 of the City's Zoning Ordinance to permit construction of sixteen (16) additional units in the area of an existing foundation that was allowed and approved under a prior Zoning Ordinance but not permitted under the current Zoning Ordinance. Variance under current Zoning Ordinance required to allow sixteen (16) units vs. the nine (9) allowed.

**Location:** 5 Willowbrook Drive, Map 128 Lots 77 & 77-1 Residential 1 & 2 Zones.

Mr. Christopher Berry, Berry Surveying and Engineering addressed the Board. Mr. Berry stated the owners of these two lots is looking to combine the two pieces of property and obtain a variance to have an additional 16 units on the site.

Mr. Ortmann explained the original project was approved for these 16 units in the 1970's and a slab was put in place, however, under the current ordinance only 9 additional units would be allowed.

Mr. Berry noted this property is unique as one lot is on one side of the brook, and the other lot is on the other side of the brook. He stated they are just looking for the number of units that were originally permitted. Mr. Berry read through the five criteria.

The Board members and Mr. Berry discussed the square footage of the two lots, the lot on the other side of the brook and whether it can ever be developed if this variance is approved, the zoning of each lot, this being an infill project, how the minimum lot size requirements of the two zones is used to calculate density, and other issues.

The Chair asked if anyone wanted to speak in favor of this variance. No one came forward. The Chair asked if anyone wanted to speak against this variance.

Mr. Dave D'Ambroise, 15 Wyvern Lane, came forward. He stated he has people coming across his property through a fence that needs repairing, and has headlines shinning in his windows. He would like something done about that.

Mr. Ortmann advised the members they could address this issue in their motion.

The Chair closed the public hearing portion of this case and the members worked on their criteria sheets.

Mr. Gates made a motion to grant this variance with the condition that fencing and/or shrubs are installed to protect against trespassers and vehicle lights, for the following reasons: The variance is not 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 impede the adequate provision of transportation, solid waste facilities, water, sewerage, schools, and parks, if granted, the benefit to this individual applicant outweighs any harm to the community as a whole, and 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. Azouri seconded the motion. The motion passed unanimously.

Mr. Ortmann advised that anyone aggrieved by this decision has 30 days from today to appeal.

**2013-15** Application by Waste Management of NH (John Nadeau, District Manager) for a special exception under Article 42.11 and 42.23 Section (c)(16) of the City's Zoning Ordinance to permit development of two on-site borrow areas to support on-site construction and operations. **Location:** Off 30 Rochester Neck Road, Map 267 Lot 2 and Map 262 Lot 22, Industry 4, Industry 4-A, and Agricultural Zones.

Ms. Anne Reichert, Waste Management, addressed the Board. She explained what the special exception was needed for, and showed plans of the borrow areas and sites for proposed construction and operations. Ms. Reichert noted that in one area of work all three zones are involved: Industry 4, Industry 4-A and Agricultural. She stated access is internal Waste Management roads, there will be no impact on Rochester roads. Ms. Reichert read through the five special exception provisions.

The Chair asked if there was anyone who wanted to speak for or against this special exception. No one came forward. There were no City comments,



however, Mr. Ortmann reminded the Board if the special exception is granted, this project is scheduled to go before the Planning Board.

The Chair closed the public hearing portion of this case and the members reviewed the provisions for special exceptions.

Mr. Meyer made a motion to grant this special exception as presented for the following reasons: The specific site is an appropriate location for the proposed use or structure, the proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood, there will not be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking, adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure, and the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. Mr. Spector seconded the motion. The motion passed unanimously.

Mr. Ortmann stated anyone aggrieved by this decision has 30 days from today to appeal.

**Other Business:**  
**OEP 19<sup>th</sup> Annual Spring Planning & Zoning Conference**  
Saturday, May 11, 2013

The members were each given information about this conference. If any members wish to attend, they should complete the registration form and submit it to the recording secretary as soon as possible.

**Adjournment:**

Mr. Meyer moved to adjourn at 9:55p.m., seconded by Mr. Spector. The motion passed unanimously.

Respectfully submitted,  
Caroline Lewis, Zoning Secretary