



PLANNING & DEVELOPMENT DEPARTMENT

City Hall - Second Floor
31 Wakefield Street
Rochester, New Hampshire 03867-1917
(603) 335-1338 - Fax (603) 335-7585
Web Site: www.rochesternh.net

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

MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF May 8, 2013 (Approved June 12, 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
Fidae Azouri, Alternate
Robert Goldstein, Alternate
Rose Marie Rogers, Alternate

Member Excused

Randy Lavallee

Also present: Kenn Ortmann, Director, Planning & Development Department
Crystal DeButts, Planning 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 Planning & Development Office for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of April 10, 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. Goldstein stated he had a conflict with Case 2013-20. The Chair stated the following alternates would fill in for excused member Mr. Lavallee. Mr. Goldstein and Mr. Azouri will vote on Case 2013-13, Ms. Rogers and Mr. Azouri on Case 2013-16, Mr. Goldstein and Mr. Azouri on Case 2013-18, Mr. Goldstein and Mr. Azouri on Case 2013-19, Mr. Azouri and Ms. Rogers on Case 2013-20.

Rescheduled Cases:

2013-11 Application by Timothy Fontneau for a variance under Article 42.6 Section (a)(1) of the City's Zoning Ordinance to permit an accessory building to be on a lot without a main building or use. Location 1062 Salmon Falls Road, Map 241 Lot 9 Agricultural Zone.

Mr. Timothy Fontneau, applicant, addressed the Board. He explained he had subdivided his lot two years ago and as a precedent condition of the Planning Boards approval he can not leave the 100 year old barn on the new 1.25 acre lot as it does not meet the current Zoning Ordinance. Mr. Fontneau read through the five criteria.

The Chair asked if anyone wanted to speak for or against this case. Mr. Dennis Fowler came forward stating he didn't believe it would be fair to allow Mr. Fontneau to be able to keep a building that doesn't have a primary use. Mr. Fowler went on to say if someone were to try to obtain a building permit to build a barn or shed on a parcel of land that didn't have a home or other primary use building on it, that person would be denied.

The Chair asked what the comments were from the City. Mr. Ortmann stated the board may want to consider limiting uses, without site review approval, to those typically associated with a single family dwelling. Mr. Ortmann stated the City Manager agreed with his comments.

The Chair closed the public hearing portion of this case.

The Board and Mr. Fontneau discussed other possible options if the variance were to be denied.

After consideration, Mr. Fontneau requested to withdraw his application.

Mr. Gates made a motion to accept the withdrawal of the application. Mr. Goldstein seconded the motion. The motion passed unanimously.

New Cases:

2013-16 Application by Leo & Michelle Brodeur for a variance under Article 42.24 Section (d)(10) of the City's Zoning Ordinance to permit a garage 20 feet from the rear lot line where 25 is required. **Location:** 29 Sugarbrook Road, Map 261 Lot 25 Agricultural Zone.

Mr. Leo Brodeur, applicant, addressed the Board. He stated he has been at this location since 2000 and he and his wife would like to build a garage but they will not meet the 25 foot setback. Mr. Brodeur read through the five criteria.

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 negatively impact health and general welfare, 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. Azouri 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.

2013-18 Application by O'Keefe Martin Partnership for two (2) variances: **1** – Under Article 42.14 Table 1 Section B (1) & C (9) of the City's Zoning Ordinance to allow retail sales and place of public assembly in the Residential-1 Zone. **2** – Under Article 42.9 Section (b)(5) and (13) of the City's Zoning Ordinance to permit 77 parking spaces where 89 are required. **Location:** 85 Milton Road, Map 210 Lot 52 Business 2 and Residential 1 Zones.

Rick Lundborn of Norway Plains Associates presented the case. He stated for the first variance they are requesting the lot is currently a split zone and even by using the 100 foot extension into the Residential 1 zone would not be enough to accommodate the auction hall his clients wish to build. Mr. Lundborn read through the five criteria for the first variance.

Mr. Lundborn stated the second variance they are requesting is for parking. He stated his clients do not see the need for the required 89 parking spaces as they do not expect that the auction hall will be that busy. Mr. Lundborn read through the five criteria for the second variance.

The Board members and Mr. Lundborn discuss the abutting properties from Flat Rock Bridge Road. The Board members state their concern regarding privacy for the residential homes. Mr. Lundborn explains the property line is wooded and the homes are approximately 110 feet away from the proposed auction hall.

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. Goldstein made a motion to grant the first variance with the conditions that the buffer between the Commercial and Residential is at least 35 feet from the property line for parking, and the dumpster is not to be located on the residential side of the lot. The variance is granted 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 increase congestion in the streets, it will not exacerbate the overcrowding of land, and it will not hamper the proper use of natural resources. If granted, the benefit to this individual applicant, outweighs any harm to the community as a whole, and 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 exist. Mr. Azouri seconded the motion. The motion passed unanimously.

Mr. Goldstein made a motion to grant the second variance for the following reasons: The variance will not be contrary to the public interest because it will not increase congestion in the streets, it will not negatively impact health and the general welfare, the spirit of the ordinance is observed because it will not increase congestion in the streets, it will not exacerbate the overcrowding of land, it will not hamper the proper use of natural resources. 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 the hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Spector seconded the motion. The motion passed unanimously.

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

2013-19 Application by 400 North Main Street LLC for a variance under Article 42.14 Table 1 Section B (1 thru 19) of the City's Zoning Ordinance to allow commercial uses in the Industry 1 Zone. **Location:** 400 North Main Street, Map 114 Lot 2, Business 2 & Industry 1 Zone

Rick Lundborn of Norway Plains Associates presented the case. He stated the owners of the lot where the former Thompson Center Arms are seeking a variance to be able to operate commercial businesses in an industrial zone. Mr. Lundborn went on to state his client is looking to keep in the same spirit as the rest of North Main Street. Mr. Lundborn read through the five criteria.

The Chair asked if anyone wanted to speak for or against this variance. No one came forward. Mr. Ortmann asked if there were any of the 19 commercial uses that the Zoning Board felt needed to be excluded in order to meet the five variance tests.

Mr. Spector stated there were no concerns from the Board.

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 undue concentration of population, 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 the hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Spector seconded the motion. The motion passed unanimously.

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

2013-20 Application by Berry Surveying & Engineering for a variance under Article 42.9 Section B (5) of the City's Zoning Ordinance to permit parking to be based on the Site Review Regulations and not the Zoning Ordinance.
Location: Milton Road, Map 210 Lots 48 & 50, Business 2 Zone.

Mr. Christopher Berry, Berry Surveying and Engineering addressed the Board. He stated they are proposing an 8,000 square foot retail store in the business 2 zone, and with the wetlands it causes some challenges with parking spaces. Mr. Berry stated he is requesting a variance for 30 parking space where 37 are needed. Mr. Berry read through the five criteria.

The Chair asked if anyone wanted to speak in favor or against this variance. No one came forward. Mr. Ortmann stated the applicant should obtain a lot line revision and site review from the Planning Board.

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 contingent on a site plan and lot line revision approval 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 reduce safety from fires, panic, and other dangers. 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 be visible from the street. Mr. Spector seconded the motion. The motion passed unanimously.

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

Other Business:

Mr. Ortmann informed the Board he attended the meeting regarding the Barrington excavation project. He stated no action was taken at the meeting, it was postponed to June 4, 2013.

Mr. Ortmann spoke of his upcoming retirement and informed the Board with the staffing transition James Grant, Director of Building Safety would be providing staff support starting in June. He went on to thank the members of the Board for all their time and effort.

Adjournment:

Mr. Gates moved to adjourn at 8:32pm. Mr. Spector seconded the motion. The motion passed unanimously.

Respectfully submitted,
Crystal DeButts, Planning Secretary