



City of Rochester, New Hampshire

Building, Zoning & Licensing Dept.
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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF November 14, 2018

The Chair called the meeting to order at 7:01 p.m. in the Council Chambers.

Roll Call:

The Zoning Secretary conducted the roll call.

Members Present

Lawrence Spector
Randy Lavallee
Robert Goldstein
Robert Gates
Shon Stevens
Leo Brodeur, Alternate

Members Excused

Also present: Julia Libby, Secretary of Building, Zoning, and Licensing Services
Joe Devine, Code Compliance Officer for Building, Zoning, and Licensing Services

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 for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of September 12, 2018 were reviewed; Mr. Goldstein made a motion to accept the minutes with a change to a typo on the third page, Mr. Gates seconded the motion. The motion passed unanimously by a voice vote.

Seating of Alternates:

Chair Spector announced that the five regular members would be voting.

New Cases:

2018-09 Corey & Gary MacKoul applicants for an Administrative Appeal, allege that an error has been made in the decision, determination, or requirement of Joe Devine on September 20, 2018 for a notice of violation for an illegal home occupation in relation to Article 42.24 section A of the Zoning Ordinance.

Location: 147 Wakefield Street, Rochester, NH 03867, 0113-0055-0000, in the Residential 2 Zone.

Jennifer Hoover introduced herself as a representative for Corey and Gary MacKoul. Corey introduced himself as the applicant. Ms. Hoover began by presenting the applicants case in regards to the administrative appeal.

Chair Spector asked the Board members if they had questions for Ms. Hoover. Mr. Stevens asked who lives upstairs and Ms. Hoover stated that Mr. MacKoul and his father live upstairs. Mr. Stevens also asked who owns the insurance business; Ms. Hoover replied that from what she understands, the insurance business is a sole proprietorship that employs two agents and a staff person. Mr. Stevens wanted to know who the sole proprietor was and Ms. Hoover stated that Peggy Lynch was and Corey MacKoul is an agent with her.

Chair Spector asked Mr. Devine to present his case for the appeal. Mr. Devine passed out photos from a site visit at the property on May 31, 2018. He briefed the Board of each photo from the visit. He stated that they ultimately sent the violation because the residential use of the property had essentially dwarfed the commercial use.

The Chair asked the Board if they had any questions for Mr. Devine, Mr. Stevens asked if there was a shower there. Mr. Devine responded that during the site visit with the Board that day there was a stand up shower in the downstairs.

Ms. Hoover stated that Mr. MacKoul does live there; he stays with his girlfriend periodically and when he does that his father does stay at the property, but currently both of them are living there. She also pointed out that the photographs had been taken in May and the violation was not sent out until September. She then briefed the Board on what has happened with the property over the last year and a half or so.

Mr. Gates asked Mr. Devine to go through the definition of subordinate. Mr. Devine said that according to Rochester's zoning the home occupation must be subordinate to the residential use and have little to no impact on the neighborhood. He stated that it was their determination when they went through the site in May that the residential space has been dwarfed by the commercial space. He said that when they were there, the space that Corey has on the application, as storage was set up for a salon, the front half of the building was set up for an insurance business, and the upstairs was set up for pieces of the salon. Mr. Devine stated that he does not think that there was a kitchen set up upstairs when they initially purchased the building, and he has not dug that far to see if they actually pulled permits. He said he also does not think there were two bathroom on the

first floor set up the way they are. Mr. Devine said that is expanding the business use according to the site plans.

Mr. Stevens asked the applicant and his representative if there were any permits pulled for work done on the property. Ms. Hoover said that she first wanted to point out a couple of things. She said that with the salon piece of things during that time they were in the middle of applying for a zoning change and they had anticipated that it would be approved so they were preparing for that. She then let Mr. MacKoul go ahead and answer about the permits. He stated that they had the electrical and mechanical permits pulled and a demo for a garage in the back. Ms. Hoover added that Peggy Lynch had been told that for some of the work they were doing they did not need permits such as replacing sinks.

Chair Spector asked how long Mr. MacKoul had been living there. Mr. MacKoul said since summertime.

The Board asked about plumbing permits for the two half baths upstairs that looked new. Mr. MacKoul said that they were told they didn't need permits to replace fixtures and that the bathrooms themselves already existed since the house used to be a duplex.

Chair Spector asked Mr. Devine if he had anything else, Mr. Devine pointed out the fact that Mr. MacKoul said that he's been living there since this summer, but the home occupation has been established since he purchased the property. He said that it's not a home occupation since he wasn't living there.

Ms. Hoover said that when they purchased the property and were approved for a home occupation, no one was living there. She said that it was inhabitable upstairs and that they had to redo all of the HVAC so when the insurance agency went in no one was living there.

Chair Spector stated that any abutters or persons affected directly by the appeal could speak to the appeal. Peggy Lynch approached the podium. She stated that she is affected by this because she is trying to maintain a business in the City after 27 years. She briefed the Board of her concerns.

Gary MacKoul approached the podium, introduced himself and briefed the Board of his concerns.

Chair Spector closed the public hearing portion of the meeting. The Board talked amongst themselves of the case.

Mr. Stevens made a motion to grant the appeal, Chair Spector seconded and the motion carried unanimously by roll call vote.

Chair Spector stated that they were handed 15 letters regarding the case that they have not been able to read. The Board let the applicants decide if they wanted to postpone the case or move forward with the application without them having read the additional information. Ms. Hoover met with her clients in the hall before answering.

They came back from the hallway and Ms. Hoover asked if the two letters from the abutters could be read, the Board agreed.

2018-10 Corey & Gary MacKoul applicants for a Variance to permit a mixed use dwelling, to include one professional office, and one personal service establishment according to Article 42.18, Table 18-A.

Location: 147 Wakefield Street, Rochester, NH 03867, 0113-0055-0000, in the Residential 2 Zone.

Ms. Hoover introduced herself again and began presenting their case. She briefed the Board on what was going on with the property and the various routes they have tried to take. Ms. Hoover began to go over what they are trying to accomplish and the five variance criteria they need to meet.

Chair Spector asked the Board if they had any questions. Mr. Goldstein asked the applicant what reason the Planning Board and City Council gave to deny the request for a zoning amendment. Mr. MacKoul stated that they did not want to rezone that area because of certain things that the Neighborhood Mixed Use zone would allow such as gas stations or tattoo shops.

Chair Spector opened the meeting to the public for input. Peggy Lynch approached podium to clear up some of the reasons the City Council denied their zoning amendment.

Chair Spector asked for the letters from the abutters to be read. Mr. Devine read them into the record. Chair Spector asked to hear from the City. Mr. Devine stated that the Department of Building, Zoning, and Licensing Services and the City Attorney review the application for a variance and they found the following facts: The variance is in direct conflict with the spirit of the ordinance and violates the ordinances basic zoning objectives because having two businesses within a single family dwelling would alter the character of the neighborhood. Second, the applicant failed to prove any unnecessary hardship, the lot is similar to the surrounding residential properties in size and like matter. Therefore, you must deny the variance.

Chair asked if the applicant had anything else. Ms. Hoover just pointed out the section of the zone was unique. The Board discussed amongst themselves.

Mr. Stevens made a motion to deny the variance because the applicant does not meet the hardship criteria based on the City's findings; Mr. Gates seconded the motion, and the motion failed by a three to two roll call vote.

Mr. Gates made a motion to grant the variance because it is not contrary to the public interest based on the applicants written documentation; Mr. Lavallee seconded the motion, the motion failed by a three to two roll call vote.

Mr. Devine stated that anyone affected directly by the decision has the right to appeal within thirty calendar days.

2018-11 Dr. Dave Pak applicant for a Variance to permit a sign that exceeds 6 square feet in a residential zone. According to Article 42.29, Section (N)(1)(a).

Location: 248 North Main Street, Rochester, NH 03867, 0115-0019-0000, in the Residential 1 Zone.

Dr. Pak approached the podium, he briefed the Board of his application. He stated that he has a variance for the property to begin with and needs somewhat of a commercialized sign for the establishment.

Mr. Goldstein asked the applicant if the sign would be lit all night long. The applicant stated that if he can he would like it to be lit throughout the evening.

Chair Spector asked if there was anyone in the audience to speak for or against the application, and no one came forward. He asked for the city's opinion. Mr. Devine stated that the Department of Building, Zoning, and Licensing review Dr. Pak's application and they found the following facts: The burden is on the applicant to provide evidence that granting the variance would not diminish surrounding property values, just because there are buildings and signs surrounding the area are similar does not provide any proof that this would not diminish property values. Granting the variance is not contrary to the public interest. The sign would fit the character of the neighborhood and substantial justice would be done. The spirit of the ordinance would be observed but the applicant has failed to show an unnecessary hardship that relates to the property. There is no documentation to prove how this property is different than any of the other properties surrounding it. Therefore, the application must be denied.

Mr. Gates made a motion to grant the variance for a sign not to exceed 3ft by 6 ft or a total of 18 sq feet because it is not contrary to the public interest as described by the applicant; Mr. Goldstein seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it is not contrary to the spirit of the ordinance as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would not result in substantial justice as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would not diminish surrounding property values as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would result in an unnecessary hardship based on the applicants findings; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Devine advised that any person directly affected by the decision has the right to appeal within thirty calendar days.

2018-12 717 Columbus Avenue, LLC applicant for a Variance to permit a gas station, convenience store and restaurant with a drive-through in the Neighborhood Mixed Use Zone. According to Article 42, Table 18-B and Table 18-C.

Location: 717 Columbus Avenue, Rochester, NH 03867, 0131-0007-0000, in the NMU Zone.

John Cronin approached the podium in representation of the applicant Mary Beth Hebert. He briefed the Board on their application as well as the five criteria.

Chair Spector asked the Board if they had any questions for the applicant, no one did. He asked if there was anyone in the audience to speak for or against the case. Gayden Lambert of 9 Old Gonic Rd approached the podium. He expressed his concerns regarding the case in opposition. Chair Spector responded that many of his concerns are things that would be addressed at the Planning Board level.

Discussion between the Board and the abutter took place about which lot he is located at and how it might affect him. The applicant addressed some of the concerns the abutter had and went over certain practices they would need to review and follow later.

Chair Spector asked the city for their opinion. Mr. Devine stated that the Department of Building, Zoning, and Licensing Services has reviewed their application and found the following facts. Number one, granting this variance is not contrary to the public interest because it does not alter the surrounding area because it is neighborhood mixed use and all the surrounding properties along 125 are commercial. Number two, the spirit of the ordinance is observed. Number three the City can find no harm in the public by granting the variance. Number four, we see no reason that property values would be diminished, currently it is an empty lot with nothing on it. By adding a building, property values will only increase. Five, given its size and shape compared to the surrounding properties, this property is remarkable different and unique and does cause a hardship. We feel that the applicant has met all five criteria and the variance should be granted, but the applicant must be sure to comply with all shore land protection acts.

Mr. Gates made a motion to grant the variance because it is not contrary to the public interest as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it is not contrary to the spirit of the ordinance as described by the applicant; Mr. Golstein seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would not result in substantial justice as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would not diminish surrounding property values as described by the applicant; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Gates made a motion to grant the variance because it would result in an unnecessary hardship based on the applicant's findings; Mr. Lavallee seconded the motion, the motion carried by a four to one roll call vote.

Mr. Devine advised that any person directly affected by the decision has the right to appeal within thirty calendar days.

2018-13 Fieldings Oil Co. Inc. applicants, for a Special Exception to permit a fuel storage office in a Highway Commercial Zone. According to Article 42, Table 18-D.

Location: 72 Old Milton Road, Rochester, NH 03867, 0131-0007-0000, in the NMU Zone.

Bill Fielding the applicant approached the podium and briefed the Board on what they are looking to do at the property. Chair Spector asked the applicant to read his answers to the criteria for a Special Exception into the record.

Chair Spector asked the Board if they had any questions. Mr. Stevens asked how many trucks exactly would be parked at the property at a time. The applicant replied that the maximum would be five.

Chair Spector asked if there was anyone in audience to speak for or against the case, no one came forward. He asked for the City's opinion and Mr. Devine stated that the Department of Building, Zoning, and Licensing Services has review the application for a Special Exception and feel it should be granted for the reasons contained in the application.

Mr. Gates made a motion to grant the Special Exception for the reasons stated in the application; Mr. Lavallee seconded the motion. Mr. Stevens asked to amend the motion.

Mr. Devine read a letter from an abutter who spoke in favor of the application into the record before they changed the motion.

Mr. Stevens made a motion to amend the original motion with the conditions of the fence, barriers, and a limit of five trucks at a time, Mr. Gates seconded and the motion carried unanimously by a voice vote.

Mr. Gates made a motion to grant the special exception with the conditions, Mr. Goldstein seconded and the motion passed unanimously by a voice vote.

Mr. Devine advised that any person directly affected by the decision has the right to appeal within thirty calendar days.

Other Business:

Chair Spector asked if there was any other business and there was none.

Adjournment:

Mr. Stevens moved to adjourn the meeting, Mr. Gates seconded and the motion carried unanimously.

The meeting adjourned at 8:44 pm.

Respectfully Submitted,

Julia Libby

Julia Libby
Secretary for Building, Zoning, and Licensing Services