



City of Rochester, New Hampshire

Zoning Board of Adjustment

MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING HELD ON FEBRUARY 13, 2019

The 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
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 neither is intended nor is it represented that this is a full transcription. A recording of the meeting is on file online at www.rochesternh.net for a limited time for reference purposes.

Approval of Minutes:

The minutes of January 09, 2019 were reviewed; Mr. Gates made a motion to accept the minutes, Mr. Brodeur seconded the motion. The motion passed unanimously by a voice vote.

Seating of Alternates:

Chair Spector asked if any of the members had a conflict, Mr. Goldstein said he would recuse himself for case number **2019-03**. Chair Spector stated that Mr. Brodeur would vote in his place.

Continued Cases:

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 approached the podium on behalf of Corey and Gary MacKoul. She briefed the Board on their application, explaining the five criteria. She also reviewed the timeline of events that occurred since the owners bought the property with the intention of developing it.

Discussion between the Board members and the attorney occurred regarding the application.

Chair Spector asked the audience if there was anyone present to speak for or against the case, no one came forward.

The Chair asked for the City staff recommendation, Mr. Grant stated that "the city feels that the variance is in direct conflict with the spirit of the ordinance and it violates the ordinance's basic zoning objectives, because have two businesses in a single family house would alter the essential character of the neighborhood. The applicant has failed to prove any unnecessary hardship. The lot is similar to the surrounding residential properties, and therefore it is suggested that you deny this variance. Several items were mentioned in the application, but none were a direct hardship. Stating keeping the property in its current use or has the need for updated utility systems, or is not marketable in its current form to not prove an unnecessary hardship."

More discussion occurred between the Board members and the applicant.

Mr. Stevens made a motion to deny the variance because the applicant failed to prove the hardship criteria based on the City's findings, Mr. Lavallee seconded and the motion carried by unanimous roll call vote.

Mr. Grant advised that anyone affected directly by the decision has the right to appeal within thirty calendar days from today.

New Cases:

2019-01 Joseph & Maureen Lefebvre applicants, for a Variance to permit building a 22 x 28 attached garage that encroaches on the side setback requirement for the R1 zone. According to article 42, table 19-A.

Location: 69 Salmon Falls Rd. Rochester, NH 03869, 0210-0083-0000, in the R1 zone.

Mr. Lefebvre approached the podium and briefed the Board on his application and the variance criteria. Discussion between the Board and the applicant took place regarding some of the criteria.

The Board asked about the Special Exception process and the applicant explained that he needed the additional 4 feet in the back and 24' would have put him over the 50 percent requirement for the setback.

Chair Spector asked if there was anyone in the audience to speak for or against the case, no one came forward. He asked for the city's opinion.

Mr. Grant stated, "The burden is on the applicant to provide evidence that granting the variance would not diminish surrounding property values. Just because the buildings surrounding are similar does not provide proof. Granting the variance is not contrary to the public interest. We agree with items two three and four. However, under item number five, the applicant has failed to show an unnecessary hardship that relates to this property. As the applicant has stated in his application the hardship is for the storage of vehicles during the winter. However, it is our feeling that the applicant should be applying for a special exception in this case and not a variance, we understand that he would like his garage to be 22 x 28 but if he were willing to drop the size to 22 x 24, we would support the special exception application.

Discussion about the applicant's options took place. Mr. Gates made a motion to deny the applicant's request for a variance based on the City's finding of facts for the hardship and property value criteria, Mr. Stevens seconded and the motion passed by a three to two roll call vote.

Mr. Grant advised that anyone directly affected by the decision have the right to appeal within thirty calendar days from today.

2019-02 Barbara Barney applicant for a Variance to permit an addition to be built that encroaches on the side setback requirement in the R1 zone. According to article 42, table 19-A.

Location: 20 Park St. Rochester, NH 03867, 0116-0116-0000, in the R1 zone.

Mr. Grant asked to interject with the City's comments before hearing the case because the case involves an accessibility issue. He stated, "In the Zoning Ordinance under 42.4.2.e.ii there is no hardship requirement that she needs to prove to obtain the variance, it is based solely off whether it is a reasonable use of the property."

Ms. Barney approached the podium and briefed the Board on her application and the criteria, showing some pictures of the current access to the basement.

The board did not have any questions for the applicant. Chair Spector asked if there was anyone in the audience to speak for or against the case, no one came forward. He asked for the City's opinion. Mr. Grant stated, "Because the hardship criteria is not needed they feel that the variance should be granted based on the reasons found in the application."

Mr. Goldstein asked if they are going to need a certified plot plan, Mr. Grant responded in order for the building permit application to be approved they would need to provide one.

Mr. Gates made a motion to grant the variance because it is not contrary to the public interest based on the applicant's findings, the motion carried by a unanimous voice vote. Mr. Gates motioned to grant the variance because it is not contrary to the spirit of the ordinance, this passed by a unanimous voice vote. Mr. Gates motioned to grant the variance because it would result in substantial justice, this passed by a unanimous voice vote. Mr. Gates motioned to grant the variance because it would not diminish the value of the surrounding properties.

Mr. Grant advised that anyone directly affected by the decision has thirty calendar days to appeal.

2019-03 Dorothy Thone applicant for a variance to permit a bar (accessory use) as the primary use on its own lot. According to article 42, section 23.A.2.A

Location: 92 Chesley Hill Rd. Rochester, NH 03867, 0246-0024-0000, in the R1 zone.

Mr. Pohopek approached the podium in representation of Ms. Thone; he introduced himself as the land surveyor for the project. He briefed the Board on the application and why they are seeking a variance. He also read off the five criteria for their application.

There was some discussion between the Board and the applicant. Chair Spector asked if there was anyone presents to speak for or against the application, no one came forward.

The Chair asked for the City's recommendation, Mr. Grant stated the City's concerns with the Zoning Ordinance regarding this type of situation. He said that if the Variance were to be granted there would need to be conditions regarding time and use of the current barn located on the lot. Discussion between Mr. Grant and the Board took place.

Mr. Gates made a motion that variance be granted because it is not contrary to the public interest, Mr. Lavallee seconded. The motion passed by a unanimous roll call vote.

Mr. Gates made a motion that it is not contrary to the spirit of the ordinance, Mr. Lavallee seconded. The motion passed by a unanimous roll call vote.

Mr. Gates motioned that the variance would result in substantial justice, Mr. Lavallee seconded. The motion passed by a unanimous roll call vote.

Mr. Gates motioned that it would not diminish surrounding property values, Mr. Lavallee seconded. The motion passed by a unanimous roll call vote.

Mr. Gates motioned to grant the variance because it would result in an unnecessary hardship and that the primary use must be established or the current accessory structure demolished within the two-year time limit, Mr. Lavallee seconded. The motion passed by a unanimous roll call vote.

Mr. Grant advised that anyone directly affected by the decision has thirty calendar days to appeal.

Other Business:

There was no other business.

Adjournment:

Mr. Brodeur moved to adjourn the meeting, Mr. Lavallee seconded and the motion carried unanimously.

The meeting adjourned at 8:31 pm.

Respectfully Submitted,

Julia Libby

Julia Libby

Secretary for Building, Zoning, and Licensing Services