



# City of Rochester, New Hampshire

## *Zoning Board of Adjustment*

### MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING HELD ON December 9, 2020

The Chair called the meeting to order at 7:00 PM.

#### **Roll Call:**

The Zoning Secretary conducted the roll call.

#### **Members Present**

Larry Spector – Chair  
Bob Gates – Vice Chair  
Leo Brodeur  
James Hayden  
Paul Giuliano, Alternate  
Taylor Poro, Alternate  
Terry Garland, Alternate

#### **Members Absent**

#### **Members Absent (Unexcused)**

Also present: Jim Grant, Director for Building, Zoning and Licensing  
Dee Mondou, Secretary for Building, Zoning, and Licensing

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These minutes serve as 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 online at [www.rochesternh.net](http://www.rochesternh.net) for a limited time for reference purposes.

#### MEETING PREAMBLE DURING COVID-19 EMERGENCY

Good Evening, as Chairman of the ZBA, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting. Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their name and ward, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

### **Approval of Minutes:**

The minutes from October 14, 2020 were reviewed; Mr. Brodeur made a motion to accept the minutes, Vice Chair Gates seconds the motion. The motion carried unanimously by a voice vote.

### **Seating of Alternates:**

Chair Spector assigns himself, Vice Chair Gates, Mr Brodeur, Mr. Giuliano and Mr. Garland as voting members at tonight's meeting.

### **New Cases:**

**Z-20-15** Tyler Reese applicant seeks a *Special Exception* from table 18-A of the Zoning Ordinance to permit an Accessory Apartment in the R1 Zone

**Location:** 10 Brickyard Dr, Rochester, NH 03867, MLB 0141-0013-0000 in the R1 Zone

Due to the technical difficulties the applicants were having, the Zoning Board of Adjustment motioned to postponed hearing case # Z-20-15 until the January 13, 2021 meeting.

**Z-20-16** Amy Alden applicant seeks a *Variance* from table 19-A of the Zoning Ordinance to permit a storage shed that encroaches on the 8' side setback requirement in the R2 Zone

**Location:** 24-26 Common St, Rochester, NH 03867, MLB 0125-0100-0000 in the R2 Zone

Amy Alden, owner presents her case reviewing the 5 criteria stating why she feels a Variance should be granted.

Chair Spector asks the board if anyone had any questions for the applicants. Vice Chair Gates motions to waive the need for a certified plot plan for this case. Mr. Brodeur seconds the motion. The motion carried unanimously by a voice vote.

Chair Spector asks if there is any input from the City. Mr. Grant reads the City comments stating the Variance should be granted. The ZBA should adopt the factual assertions made by the applicant and the evidence presented in her application as the findings of fact supporting each of the five criteria.

Chair Spector asks the board if anyone wants to make a motion. Vice Chair Gates makes a motion to grant the request for a Variance based upon the articulations they present in their application. Mr. Brodeur seconds the motion. The motion carried unanimously by a roll call vote.

Mr. Grant advised that anyone affected directly by this decision has the right to appeal within 30 calendar days.

**Z-20-17** EIP Communications II, LLC applicant seeks *Special Exception* to permit construction, operation and maintenance of wireless communications facility including without limitation 150' tower, associated radio communications equipment and fenced compound in the Agricultural Zone

**Location:** 156 Lowell St, Rochester, NH 03867, MLB 0244-0002-0001 in the Agricultural Zone

Mark Borenstein presents the case for EIP Communications II, LLC as submitted in their application package. He asks that the board grant the special exception for the tower to be up to 156' with the caveat that if they have to decrease the height to meet the FAA regulations they may do that.

Chair Spector asks the board if anyone had any questions for the applicants. Mr. Garland and Mr. Giuliano present questions which Mr. Borenstein addresses.

Chair Spector asks if there is any input from the public. Mr. Grant reads input received from Abutters from 156 Lowell St and 6 Quarry Dr. Chair Spector asks if there is any input from the City. Mr. Grant reads the City comments stating that the Special Exception should be granted. By granting the Special Exception, the Board adopts the factual assertions and evidence presented by the applicants in support of its decision.

Chair Spector asks Mr Borenstein if he had any comments for the abutters. Mr. Borenstein addresses their concerns and questions.

Chair Spector asks the board if anyone wants to make a motion. Vice Chair Gates makes a motion to grant the request for a Special Exception based on their application. Mr. Giuliano seconds the motion. The motion carried unanimously by a roll call vote.

Mr. Grant advised that anyone affected directly by this decision has the right to appeal within 30 calendar days.

Motion amended to stipulate that the tower be no more than 156 ft in height.

**Z-20-18** Nodrog Farms LLC applicant seeks *Variance* from table 29-A to permit two portable trailer mounted signs in the Granite Ridge Commercial District

**Location:** 150 Marketplace Blvd, Rochester, NH 03867 MLB 0216-0011-0000 in the Granite Ridge Zone

Gordon Long, applicant presents his case as well as reviewing the 5 criteria.

Chair Spector asks the board if anyone had any questions for the applicants. Board members present questions and concerns which Mr. Long addressed.

Chair Spector asks if there is any input from the public. No Abutter input. Mr. Grant reads the City comments stating the variance should be denied. The applicants have failed to present facts which establish that the property suffers from an unnecessary hardship which would be mitigated by the issuance of this variance. In fact, the applicant has only cited hardship to themselves of physically placing a sign on its current location. Hardship means hardship to the property, not to the owner.

Chair Spector asks the board if anyone wants to make a motion. Vice Chair Gates makes a motion to deny the request for a Variance based on the fact that they have not met the hardship requirement. Mr. Brodeur seconds the motion. The motion carried unanimously by a roll call vote.

Mr. Grant advised that anyone affected directly by this decision has the right to appeal within 30 calendar days.

**Z-20-19** Robert and Denise Higgins applicants seek *Variance* from table 18-E to permit an animal grooming use in the R2 Zone

**Location:** 101 Wakefield St, Rochester, NH 03867 MLB 0116-0195-0000 in the R2 Zone

Attorney Jerry Grossman presents the case reviewing the 5 criteria.

Chair Spector asks the board if anyone had any questions for the applicants. Mr. Garland presents a question which Attorney Grossman addresses.

Chair Spector asks if there is any input from the public. Mr. Grant reads the Abutter comments from 103 Wakefield St and 2 Orchard St.

Mr. Grant reads the City comments stating the variance should be denied. This violates the spirit of the Ordinance because the Zoning Ordinance states that if a non-conforming use (gas station/office) has been abandoned by the owner, no other non-conforming use shall be established (275-30.4.A). Here, the owner has abandoned the non-conforming use. The goal of the Zoning Ordinance is to get all properties in the zone in compliance with the current ordinance as quickly as possible. Granting this variance would violate that principle.

Chair Spector asks the board if anyone wants to make a motion. Vice Chair Gates makes a motion to grant the request for a Variance based on writings of the applicant. Mr. Garland seconds the motion. The motion carried unanimously by a roll call vote.

Mr. Grant advised that anyone affected directly by this decision has the right to appeal within 30 calendar days.

**Other Business:**

New Member James Hayden welcomed to the Board.

**Adjournment:**

Mr. Brodeur makes a motion to adjourn. Vice Chair Gates seconds the motion. Motion carried unanimously by voice vote. Meeting adjourned at 8:23 PM.

Respectfully Submitted,

*Dee Mondou*

Dee Mondou Secretary for  
Building, Zoning, and Licensing Services