

City of Rochester Zoning Board of Adjustment

Wednesday February 10, 2021

Virtual Meeting

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on April 14, 2021)

Members Present

Larry Spector – Chair
Bob Gates – Vice Chair
Leo Brodeur

Members Absent

Terry Garland, excused
James Hayden, excused

Alternate Members Present

Paul Giuliano
Taylor Poro

Staff: Shanna B. Saunders, *Director of Planning & Development*
Crystal Galloway, *Planning Administrative Assistant II*

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 for a limited time for reference purposes.

Mr. Spector called the meeting to order at 7:23pm and read the following statement:

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, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

The Zoning Secretary conducted the roll call. All Zoning Board members were present, with the exception of Mr. Garland and Mr. Hayden who were both excused. In addition, all Zoning Board members indicated that they were alone in the location from which they were connecting remotely. Mr. Gates was having technical issues and so Vice Chair Mr. Spector was seated as acting Chair.

3. Seating of Alternates:

Mr. Spector assigned himself, Mr. Gates, Mr. Brodeur, Mr. Giuliano and Mr. Poro as voting members at tonight's meeting.

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Giuliano to approve the minutes from the January 13, 2021 meeting. The motion carried unanimously by a roll call vote.

5. Continued Cases:

Z-21-01 Zaremba Project Development, LLC applicant seeks a *Variance* from section 12.3 and 12.8 of the Zoning Ordinance to allow construction of a retail development within the wetlands and within the 50-foot wetland buffer.

Location: 480 Gonic Road, Rochester, NH 03839, Map 262 Lot 29 in the Highway-Commercial Zone

Ms. Saunders told the Board the applicant requested to be tabled to the March meeting to allow the chance to meet with the Conservation Commission on February 26th.

A motion was made by Mr. Brodeur and seconded by Mr. Giuliano to continue the application to the March 10, 2021 meeting. The motion carried unanimously by a roll call vote.

6. New Cases:

Z-21-02 10 Farmington Road, LLC applicant seeks a *Variance* from Section 12.3 and 12.8 of the Zoning Ordinance to permit alteration of land within the wetland buffer to allow for a building, parking, and site improvements.

Location: 10 & 14 Farmington Road, Rochester, NH 03867, Map 221 Lots 158 & 159 in the Granite Ridge Development Zone.

Monica Kieser of Hoefle, Phoenix, Gormley and Roberts explained the proposal to purchase lot 158 to expand the business of lot 159. She said there is an 8,000 square foot addition proposed along with a traffic access area. Ms. Kieser said they have gone before the Conservation Commission and received comments that they are working on incorporating into the plans.

Ms. Kieser explained the criteria is outlined in the memo that was provided to the Board with the application. She went on to explain the variance is needed because the lot is burdened by the wetlands and the associated 50-foot buffer that cross the property in a v shape. Ms. Kieser explained on the other side of the lot is a 50-foot right-of-way that needs to be kept clear and further suppresses the developable area.

Ms. Kieser said they have a permitted commercial use on lot 159 and want to extend it onto lot 158, and would argue that it's consistent with the goals of the Granite Ridge Development District and the uses that are permitted there.

Ms. Kieser went on to say they have submitted a wetland report which explains the impact they are proposing and confirms the impact is not directly in the wetland and there are efforts being taken to minimize the impact of the development on the buffer.

Ms. Kieser said granting the variance would not alter the character, the locality, or public health, safety, or welfare. She said the development would not diminish surrounding property values, and there will be adequate buffering between the commercial building and the remaining residential property.

Ms. Kieser explained denying the variance would result in an unnecessary hardship because there are special conditions that distinguish this property from others in the area, specifically the impact of the wetlands across the lot coupled with the right-of-way which minimize the building envelope considerably.

Mr. Giuliano asked if the firm is representing both the applicant and the current owner of lot 158. Ms. Saunders asked if the owner of lot 158 has given permission to be represented. Ms. Kieser said they have submitted an owner authorization letter from the property owner with the application. Saunders confirmed.

Mr. Brodeur asked that the Conservation Commission notes be discussed. He further asked if the variance is approved would the nine items noted from the Conservation Commission be addressed. The applicant's agent, Chris Rice said they would and have in fact submitted a revised draft plan to City Staff for review. He said all of the items have been addressed with the exception of items 1) to consider pervious pavement around the building because it's something the owner doesn't want to do mainly because of maintenance concerns, and item 9) to consider separate access to employee parking area to limit impacts. Mr. Rice said they have looked at different access points but they don't work from a functionality standpoint for the user. He said the Commission also asked that they look at shifting the drive aisle over towards the existing right-of-way which has been depicted on revised plans submitted to Staff.

There was a brief discussion regarding using pervious pavement in a specific section. Ms. Saunders told the Board it is something other entities have done, but added it is a challenge because you can't sand pervious pavement so there would need to be a very specific maintenance plan.

Mr. Spector asked if the proposed building was smaller would they need to go into the wetland buffer. Mr. Rice said the building would need to be considerably smaller. He added they have worked with a Wetland Scientist to minimize the impacts and propose vegetation.

Mr. Spector opened the public hearing. No one from the public was present to speak; he brought the discussion back to the Board.

Ms. Saunders said Staff recommends approval based on the Conservation Commission recommendations.

A motion was made by Mr. Brodeur and seconded by Mr. Giuliano to grant the Variance as described with the conditions set forth by the Conservation Commission on the February 23, 2021 letter. The motion carried unanimously by a roll call vote.

Z-21-03 Steven Foss applicant seeks an *Appeal of Administrative Decision* on the basis of improper use determination.

Location: 159 Chestnut Hill Road, Rochester, NH 03867, Map 216 Lot 72 in the Agricultural Zone.

Director of the Building, Zoning and Licensing Department, Jim Grant gave the Board a brief history of the property. He said in 2018 the Compliance Officer removed some signs the applicant had up in a few locations, at that time the applicant was told he needed to submit a project narrative to the Planning Department, who then told the applicant he would need to seek a variance because what he was proposing was not an allowed use as a home occupation.

Mr. Grant told the Board the applicant is now calling himself a "Roadside Farm Stand" which is the correct use if he had been a farm in the first place. Mr. Grant told the Board under the Zoning Ordinance the minimum lot size for a farm is five gross acres which the applicant does not have. He went on to explain under RSA 674:43 which requires Planning Board approval for nonresidential uses.

Mr. Brodeur asked how long has the applicant been selling christmas trees. Mr. Grant said the first time it was made light of was 2018.

Ms. Saunders said what the Board needs to determine is whether or not to uphold the notice of violation. Mr. Spector said he is not in favor of overriding Mr. Grant's decision.

Mr. Giuliano asked if someone had five acres and was growing the trees on the farm, would they still need approval in order to sell them out front. Mr. Grant said yes, they would need approval through the Planning Board.

The applicant, Steven Foss said he was selling Christmas trees and according to 275 Section 5 in the Zoning Code Table 18 E, it lists Roadside Farm Stands as a permitted use. He went on to say Christmas trees are considered a Roadside Farm Stand item.

Mr. Grant informed the applicant that even though it's a permitted use he still needs to comply with Site Plan Regulations and get approval from the City, which the applicant neglected to do.

Ms. Saunders asked that the Board determine what use this would fall under and give the applicant directive. Such as if the Board determines this is a Roadside Farm Stand and it is permitted by right the applicant would need to submit a Site Plan application for approval for the new commercial operation he is doing.

Mr. Spector told the applicant he needs to get specific city approval in order for him to have a commercial use.

Ms. Saunders told the applicant to set up an appointment with her to go over the application he needs to fill out.

A motion was made by Mr. Spector and seconded by Mr. Giuliano to deny the Appeal of Administrative Decision as presented, characterize the use as a Roadside Farm Stand and require the applicant to obtain Site Plan approval before opening next year. The motion carried unanimously by a roll call vote.

7. Other Business:

Mr. Giuliano asked if there were any new members coming onto the Board. Ms. Saunders said the City is running short on several volunteer Boards. She said Staff has urged the Mayor to make an announcement at a City Council meeting.

Mr. Gates asked when the City will be going back to in person meetings. Ms. Saunders told the Board the Mayor disbanded in person meetings in December when the Covid-19 cases started to rise again.

8. Adjournment:

A motion was made by Mr. Brodeur and seconded by Mr. Giuliano to adjourn at 8:25pm. The motion carried unanimously by a roll call vote.

Respectfully Submitted,

Crystal Galloway,
Planning & Zoning Secretary

and

Shanna B. Saunders,
Director of Planning & Development