

# City of Rochester Zoning Board of Adjustment

Wednesday May 12, 2021

Virtual Meeting

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on May 24, 2021)*

## Members Present

Bob Gates – Chair

Larry Spector – Vice Chair

Leo Brodeur

James Hayden

## Members Absent

## Alternate Members Present

Terry Garland

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](http://www.rochesternh.net) for a limited time for reference purposes.

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Mr. Gates called the meeting to order at 7:00pm and the Zoning Secretary conducted roll call.

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### **3. Seating of Alternates:**

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

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### **4. Approval of Minutes:**

*A motion was made by Mr. Spector and seconded by Mr. Brodeur to approve the minutes from the April 14, 2021 meeting. The motion carried unanimously.*

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## 5. Continued Cases:

**Z-21-05 David Waleryszak** applicant seeks an *Administrative Decision Appeal* on the basis of the use shouldn't be allowed in the zone.

**Location:** 107 Betts Road, Rochester, NH, Map 204 Lot 12 in the Agricultural Zone.

Ms. Saunders explained the applicant's attorney requested a continuance to allow further discussion between both home owners.

*A motion was made by Mr. Brodeur and seconded by Mr. Spector to continue case Z-21-05 to the June 9, 2021 meeting. The motion carried unanimously.*

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## 6. New Cases:

**Z-2021-09 Gary Roy** Seeks a *Special Exception* from Table 18-C to permit a "food stand" food truck in the Highway Commercial zone.

**Location:** 7 Milton Road, Rochester, Map 222 Lot 94 in the Highway Commercial Zone.

Ms. Saunders explained the meeting date was wrong on the abutter notices so for that reason the case cannot be heard. She the Board can hold a special meeting on Monday May 24<sup>th</sup>. They agreed. New notices will be sent with that date.

**Z-21-10 EFI Express, LLC** Seeks a *Variance* from Section 23.2.A(1)(k) to allow a 1,500 square foot accessory/security apartment where 800 square feet is permitted by Zoning.

**Location:** 0 Tebbetts Road, Rochester, Map 257 Lot 66 in the Industrial Zone

Robin Lunderlick, project designer explained there is an office area on the first floor and within the first 50 feet of the building, on the second floor, they are proposing an apartment to allow the owner to be onsite for security to the business. Mr. Lunderlick said the applicant is requesting more than 800 square feet to allow for a livable space.

Mr. Lunderlick went on to go through the variance criteria. He said granting the variance would not be contrary to the public interest because the building footprint and use proposed is allowed, allowing for larger than 800 square feet will provide adequate space for property security to occur on the proposed property.

If the variance were granted, the spirit of the ordinance would be observed because the building footprint is not proposing to be altered, the security apartment area is completely internal, and will provide the owner to better serve his business and the surrounding properties with added security. Granting the variance would do substantial justice because the larger security apartment will allow the

owner to provide a more adequate amount of security for the property, from the public's view it will be unnoticeable.

If the variance were granted, the values of the surrounding properties would not be diminished because the addition of security to the area will provide additional value to the lot and abutters.

Mr. Lunderlick explained the unnecessary hardship is the security apartment is internal, the public will not be able to notice the difference between 1,500 square feet and 800 square feet. The proposed use is a reasonable one because the 1,500 square feet will allow the property owner to better serve his business with additional security to the area.

Mr. Gates asked if anyone wanted to speak in favor or against the application.

Applicant Marc Swanson said he runs a high performance shop and at any given time there is a lot of money on the premises. He said having the ability for the owner to be able to live in the apartment enhances the security of the property.

There was no comments from the public. Mr. Gates brought the discussion back to the Board.

Mr. Spector asked if the owner would be allowed to rent the apartment. Ms. Saunders explained according the Zoning Ordinance the apartment must be owner occupied.

*A motion was made by Mr. Spector and seconded by Mr. Giuliano to grant the Variance as presented with the condition the apartment is not to be rented. The motion carried unanimously.*

**Z-21-11 Waterstone of Rochester, LLC** Seeks a *Variance Exception* from Section 8.3 to allow the subdivision of a portion of the parcel containing the existing Market Basket, with associated parking, with a zero side setback for pavement, where the common line will be an existing wall.

**Location:** 120 Marketplace Boulevard, Rochester, Map 216 Lot 11 in the Granite Ridge Development Zone

FX Bruton of Bruton & Berube explained the variance request. He said they would like to subdivide the Market Basket unit of the Ridge Marketplace development.

Mr. Gates asked why they want to subdivide the lot. Mr. Bruton explained Market Basket wants to own the property as opposed to being a renter.

Mr. Bruton explained in the Granite Ridge Development zone the requirement is there is to be a five foot pavement setback between properties and there is to be a vegetative buffer.

Mr. Bruton said granting the variance wouldn't be contrary to public interest because nothing would change and would maintain the essential characteristics to the neighborhood. He said the spirit and intent of the ordinance is observed because the existing landscaping on the parcel. Mr. Bruton said there would be no change or detrimental effect to the public.

Mr. Bruton explained there would be a hardship if they are required to take away pavement that already exists and adding additional buffering would not do anything to the general intent of the ordinance.

Mr. Gates asked if anyone wanted to speak in favor or against the application. There was no one present to speak. Mr. Gates brought the discussion back to the Board.

Mr. Giuliano asked if this would need City Council approval because it's in a TIF district. Mr. Saunders explained they will need to go before the Planning Board with a subdivision application and they may need cross easements for traffic but it does not need Council approval.

Mr. Brodeur asked what happens if other tenants within the development want to subdivide their lots. Mr. Bruton explained Market Basket is the largest unit out of all of them and it is the one that has access to the frontage which none of the other units have.

Ms. Saunders explained legal counsel has questions about the hardship criteria, he believes it can be accomplished by a condo subdivision instead.

*A motion was made by Mr. Brodeur to deny the variance because the applicant did not meet all the criteria, specifically the hardship criteria. There was no second. The motion failed.*

*A motion was made by Mr. Spector and seconded by Mr. Hayden to grant the variance as presented. The motion carried by a 4-1 vote. Mr. Brodeur opposed.*

**Z-21-12 Easter Seals New Hampshire, Inc.** Seeks a *Variance* from Table 19-A to permit construction of a senior housing complex featuring a sloped roof that exceeds the minimum permissible building height (35 feet) by 5 feet and  $\frac{3}{4}$  inches.

**Location:** 215 Rochester Hill Road, Rochester, Map 243 Lot 39 in the Agricultural Zone

Mr. Spector recused himself. Mr. Gates said the voting members would be himself, Mr. Brodeur, Mr. Hayden, Mr. Poro, and Mr. Garland.

Megan Carrier of Sheehan Phinney Bass & Green said the proposed construction is an expansion of their senior services operation out of the existing Champlin House.

Ms. Carrier went through the variance criteria. She said the variance would allow the building to have a pitched roof which is architecturally similar to the existing Champlin House. Ms. Carrier said a denial of the variance would be a loss to both Easter Seals and the public due to the need for senior housing. Ms. Carrier said the size of the property is significantly larger than most lots in the area; the existing historical structure on the site; and a previously installed oversized water and sewer capacity onsite, which was installed in connection with a much bigger planned unit development that was approved in 2003.

Mr. Gates asked if anyone wanted to speak in favor or against the application. There was no one from the public present to speak. Mr. Gates brought the discussion back to the Board.

Mr. Hayden asked if property is lower or higher than Rochester Hill Road. Christopher Miller of Easter Seals New Hampshire explained the property is slightly higher than Rochester Hill Road then slopes down to the existing Champlin House.

Mr. Giuliano asked if granting the variance would affect the enforcement of building heights. Ms. Saunders said it wouldn't.

Mr. Giuliano asked if they would be connecting to Health Care Drive. Mr. Miller said the plan is to shift access to Health Care Drive because the existing driveway would not be considered a safe exit for the

additional traffic because of site distance. He said they will use the existing driveway as an emergency access only.

*A motion was made by Mr. Brodeur and seconded by Mr. Poro to grant the variance based on the criteria as presented. The motion carried unanimously.*

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## **7. Other Business:**

There was no other business to discuss.

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## **8. Adjournment:**

*A motion was made by Mr. Brodeur and seconded by Mr. Hayden to adjourn at 7:50pm. The motion carried unanimously by a roll call vote.*

Respectfully Submitted,

Crystal Galloway,  
*Planning & Zoning Secretary*

and

Shanna B. Saunders,  
*Director of Planning & Development*