

City of Rochester Zoning Board of Adjustment

Wednesday April 14, 2021

Virtual Meeting

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on May 12, 2021)

Members Present

Bob Gates – Chair

Larry Spector – Vice Chair

Leo Brodeur

James Hayden

Members Absent

Taylor Poro, excused

Alternate Members Present

Terry Garland

Paul Giuliano

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. Gates called the meeting to order at 7:00pm 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. Poro who was excused. In addition, all Zoning Board members indicated that they were alone in the location from which they were connecting remotely.

3. Seating of Alternates:

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

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Spector to approve the minutes from the February 10, 2021 meeting. The motion carried unanimously.

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

Mr. Gates asked the applicant to focus solely on the five variance criteria because that is what the Board uses to make its determination whether to grant or deny a variance.

Attorney Phillip Hastings explained the project is for a single story 9,100 square foot retail building. He said the site is relatively small, less than three acres and is encumbered by over an acre of jurisdictional wetlands. Mr. Hastings said the impact to the wetlands are very slight, at 2,947 square feet. He said the impact to the wetland buffer is a little more substantial as portions of the building, parking area, and the stormwater detention facility will be within the 50-foot buffer.

Mr. Hastings told the Board the Conservation Commission spent a fair amount of time reviewing this project and recommended not to support the project due to the wetland impact. He said the Conservation Commission jurisdiction is limited and they were only looking at how the wetland buffer provisions pertain to this project, not whether they are subject to a variance under the five criteria.

Mr. Hastings went on to address the five criteria. He said the variance would not be contrary to public interest, adding it's in the land owner's interest to make reasonable use of their property. He said the wetland is of very low value, the disturbance to the buffer is minimal. Mr. Hastings said the project has been designed to minimize impacts to the wetland, protect the water quality, and provide for proper stormwater management.

Mr. Hastings said the harm to the applicant for not granting the variance is substantial because the property cannot be put to any reasonable use. He said no use of the site could be allowed without a variance because of the extensive nature of the wetlands on the site, the limited upland available which impacted severely by the 50-foot buffer requirement.

Mr. Hastings said granting the variance would not diminish the value of the surrounding properties. He said the site is in a commercial area, its zoned commercial and there are several other commercial uses nearby. Mr. Hastings said denying the variance would result in an unnecessary hardship.

Ms. Saunders read the following letter from the Conservation Commission into the record.

Dear ZBA Members:

In accordance with Zoning Ordinance 275.12(m) the above application was reviewed by the Rochester Conservation Commission at their November 18, 2020 meeting and again at their February 24, 2021 meeting.

The Commission has voted to NOT support the proposed variance request. The unanimously supported motion made at their 2/24/21 meeting was:

"I motion to not support the proposal due to the amount of wetland and buffer impact, proximity to the NH DES Protected Shoreland, and inability to further reduce wetland/buffer impacts. The lot is 50% wetland and the proposal calls for 80-90% of the wetland buffer to be permanently impacted/lost. Minimization of impact has not been demonstrated; this lot is too small and encumbered for this development.

The proposed parking lot, structure, snow storage, and storm water pond are in the wetland buffer/wetland and as such there is essentially no wetland buffer remaining.

Furthermore, the site design will likely result in future disturbances to the remaining wetlands; as such the Conservation Commission should object to the wetland/buffer impacts proposed."

Sincerely,



Mike Dionne, Conservation Commission Chair

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. Spector said he is not in favor of granting the variance. He said going into the 50-foot buffer is one thing, but going into the wetland is something else.

Mr. Hastings said the Conservation Commission looks at the ordinance and how the project affects the wetlands. He said they spent very little time focused on the application and spent very little time looking at what the applicant has proposed and the mitigation measures they have incorporated. He said they reached a conclusion that is probably reasonable in their limited jurisdiction.

Chief Planner and Staff support for the Conservation Commission Seth Creighton told the Board the Conservation Commission took three meetings to review the application. He said they took their time reviewing the proposal and came to the conclusion the use doesn't fit well on the site.

A motion was made by Mr. Brodeur and seconded by Mr. Spector to deny the variance from Section 12.2 and 12.8 of the Zoning Ordinance based on the comments in the February 26, 2021 letter from the Conservation Commission which speaks to not meeting all the variance criteria. The motion carried unanimously.

6. New Cases:

Z-2021-04 EFI Express, LLC Seeks a *Variance* from Section 23.2.A(1)(k) to allow a 1,300 s.f. accessory/security apartment where 800 s.f. is permitted by Zoning.

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

Ms. Saunders informed the Board the applicant withdrew the application.

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

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

Applicant David Waleryszak explained he started the appeal for 107 Betts Road on February 4, 2021 when he received the administrative decision which allowed the use to continue to operate in a residential neighborhood.

Mr. Waleryszak said he's noticed a buildup of activity at 107 Betts Road including the presence of large trees and other industrial activity. He said he went to the City about the issue and was told there were no permits for the property to allow this type of activity. Mr. Waleryszak said the noise coming from the saw mill is very loud and disruptive to him and his family. He went on to say originally in 2002 there was only one mobile home on the lot. He said Chapter 275 Section 30.2 of the Zoning Ordinance went into effect in 1995, anything after that would be required to go before the Planning Board, have permits, and town input. He said in 2020 you can see the buildup of trees, logs, and a full operation. Mr. Waleryszak said the operation runs on Saturdays and sometimes on Sundays and is very disruptive.

Mr. Gates asked if the activity on the property started out as something that would have been acceptable but has grown into something that is now not acceptable. Mr. Waleryszak that's correct. He went on to say originally it looked like the owner was just using the property to store items and vehicles to support his septic system business but has noticed a little at a time he's been adding to the business and now it's loud and it's constant.

Ms. Saunders told the Board the City's Legal Counsel has been in touch with the owner of 107 Betts Road Attorney and they are working on some jurisdictional items. She said they would be asking for a continuance.

Mr. Gates asked if any other abutters are as concerned as Mr. Walerszak. Building and Licensing Director Jim Grant said he spoke to another abutter who doesn't have any issue with the activity.

Mr. Grant explained this is an unusual case as normally he would give the property owner a notice of violation and the property owner would appeal the decision.

Mr. Gates asked if the applicant was okay with a continuation to see if the two attorneys can mitigate the situation.

A motion was made by Mr. Spector and seconded by Mr. Brodeur to continue the application to the May 12, 2021 meeting to allow the legal representatives time to come to an agreement. The motion carried unanimously by a roll call vote.

Z-21-06 7 Browning Drive, LLC Seeks a *Special Exception* from Section 23.2A(1) to permit an accessory apartment in the R1 zone.

Location: 7 Browning Drive, Rochester, Map 246 Lot 32-23 in the Residential-1 Zone

Mr. Hayden recused himself from voting. Mr. Gates appointed Mr. Giuliano to vote in his place.

Kevin Poulin of Berry Surveying and Engineering presented the application for a Special Exception to allow an accessory apartment above a drive under garage. He said the architecture is similar to the residential homes that surround the property. Mr. Poulin said access to the unit will be gained from inside the primary residential structure.

Mr. Poulin went through the five criteria with the Board. He explained the similar architecture will be compatible with the surrounding residences. He said there will be plenty of parking in the driveway in addition to the drive under garage so on street parking will not be an issue.

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.

Ms. Saunders told the Board the applicant meets the criteria.

A motion was made by Mr. Giuliano and seconded by Mr. Brodeur to grant the Special Exception. The motion carried unanimously by a roll call vote.

Z-21-07 Thomas and Diane Aubert Seeks a *Special Exception* from Attachment 5 to permit an excavation operation.

Location: 36 Cross Road, Rochester, Map 205 Lot 18 in the Agricultural Zone

Mr. Hayden recused himself from voting. Mr. Gates appointed Mr. Giuliano to vote in his place.

Kevin Poulin of Berry Surveying and Engineering presented the application for a Special Exception to allow an excavation operation within the agricultural zone. He explained the operation is to support the applicants subdivision construction located at 828 Portland Street. Mr. Poulin told the Board the parcel is surrounded by mostly commercial properties. He said abutting the rear of the site is Route 16, to the north of the site is a commercial storage facility, and to the east and south is a large wetland in addition to the railroad.

Mr. Poulin said the excavation operation is screened from the other uses because it is several hundred feet off Cross Road and is screened by vegetation on the sides of the parcel.

He went on to explain the site has been used as a sand and gravel pit and the excavation operation will be a lower volume operation with the applicant running two to three dump truck trips per hour.

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.

Ms. Saunders explained the application meets the criteria and told the Board the applicant will need to go to the Planning Board as well.

Mr. Brodeur asked how long the operation will take. Mr. Poulin said it will take approximately two years.

Mr. Brodeur asked what days the trucks would be running. Mr. Poulin said they adhere to the construction hours which will be part of the Planning Board approval for the subdivision.

Mr. Giuliano asked why the applicant needs a Special Exception when they own both of the parcels. Ms. Saunders explained it's due to the impacts to the neighbors, ground water, and excessive use on near by roads.

Mr. Brodeur asked what will happen to the parcel once excavation is complete. Mr. Poulin explained the site will be reclaimed and will receive four inches of loam and seed.

A motion was made by Mr. Brodeur and seconded by Mr. Spector to grant the Special Exception. The motion carried unanimously by a roll call vote.

Z-21-08 Jacob Bobbie Seeks a *Special Exception* from Section 24.1(F) to permit parking of an un-marked trailer that is used for business.

Location: 10 First Street, Rochester, Map 120 Lot 167 in the Residential-1 Zone

Applicant Jacob Bobbie explained the proposed location for trailer storage was chosen to provide the maximum amount of shielding from surrounding properties. He said the trailer in questions is black and un-marked and looks like a normal recreational trailer.

Mr. Bobbie explained he conducts mobile custom repair and fabrication services on the road, his intent is not to encumber the neighborhood with industrial activities.

Mr. Brodeur asked what is stored in the trailer. Mr. Bobbie explained there aren't any hazardous material in the trailer but there are chemicals.

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.

Ms. Saunders explained a Special Exception is needed for a Home Occupation III. She went on to say the applicant meets the criteria and support granting the Special Exception.

A motion was made by Mr. Giuliano and seconded by Mr. Brodeur to grant the Special Exception. The motion carried unanimously by a roll call vote.

7. Other Business:

Mr. Gates asked when the Board could resume in person meetings. Ms. Saunders told they could go back to in person meetings in May but give the applicants a choice of staying virtual or in person.

8. Adjournment:

A motion was made by Mr. Brodeur and seconded by Mr. Giuliano to adjourn at 8:26pm. The motion carried unanimously by a roll call vote.

Respectfully Submitted,

Crystal Galloway,
Planning & Zoning Secretary

and

Shanna B. Saunders,
Director of Planning & Development