

# City of Rochester Zoning Board of Adjustment

Monday July 14, 2021

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on August 11, 2021)*

## Members Present

Bob Gates – Chair

Larry Spector – Vice Chair

Leo Brodeur

James Hayden

## Members Absent

Terry Garland - excused

## Alternate Members Present

Paul Giuliano

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

Dee Mondou, *Building & Licensing 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 for the nights meeting.

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

*A motion was made by Mr. Brodeur and seconded by Mr. Spector to approve the minutes from the May 24, 2021 meeting. The motion carried unanimously.*

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## 5. Continued Cases:

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

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

Chair Gates states that this case has been before the board for an extended period of time and Mr Waleryszak has presented his case previously. Since the attorney for Mr Canfield has not, he asks him to briefly present his findings.

Attorney Chris Hilson presents why he thinks this appeal should be denied and the findings of Mr. Grant be affirmed. That this a grandfathered vested nonconforming use. He mentions the sworn affidavits of neighborhood support for Mr. Canfield who has been there since the late 1970's. He addressed the alleged noise and that the Compliance Officer went to the site and took decimal readings of the cutting operation and found the readings were around the 50's comparing it to the conversation being held, which is around 60. He says there is no significant changes in his ongoing operations, there is not a noticeable intensification of use over time, and the foot print of the operations has not changed for at least as far back as they were able to get aerial photographs. States that the applicant has not provided his burden of proof that Mr. Grant's findings were unreasonable or unlawful and asks that the Board affirm Mr. Grant's findings that Mr. Canfields historical operation is a preexisting nonconforming use.

Chair Gates asks if the Board has any questions. No questions from the Board.

*A motion was made by Mr. Spector to deny the appeal due to the facts were presented. Motion was seconded by Mr. Brodeur.*

Motion carried unanimously by roll call vote.

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## 6. New Cases:

**Z-21-13 Heather Hatch** Seeks a *Special Exception* from Section 24.4 to permit a Home Occupation-3 in the Residential-2 zone.

**Location:** 18 Fairway Avenue, Rochester, Map 124 Lot 127 in the Residential-2 Zone.

Ms. Hatch presents her case reviewing the 5 questions on the application.

Mr. Brodeur asks Ms. Saunders if the current 8' setback of the salon is an issue. Ms. Saunders states that in this zone the setback is 8'.

Chair Gates asks how many parking spaces she has for clients. Ms. Hatch confirms that they have up to 4 spaces they can utilize.

Mr. Spector asks what the hours will be. Ms. Hatch stated she would not be open before 9AM or after 9PM.

Mr. Gates asked if there was anyone to speak in support or in opposition of the applicant.

Ms. Cheryl Dubois who is an abutter says that she has no objection.

Mr. Spector questions the 4 spaces for client parking when the application states that there will be no more than 2 employees working onsite. Ms. Hatch explains that right now she would be the only one working there but there will be 2 booths and the potential to rent a space in the future. She also says they have a 2 car garage that she will be parking in.

Mr. Gates ask Ms. Saunders for City's opinion. She says that legal council had no major issues with this.

*A motion was made by Mr. Brodeur to grant the Special Exception. Motion was seconded by Mr. Spector. The motion carried unanimously.*

**Z-21-14 Astoria Blvd Realty Corp.** Seeks a *Special Exception* from Section 18.5 to permit the parking of fuel trucks/fuel storage in a 7,000 square foot area in the Highway Commercial zone.

**Location:** 323 Gonic Road, Rochester, Map 258 Lot 61 in the Highway Commercial Zone.

Attorney Jerome Grossman presents for the applicant reviewing the 5 criteria needed. He states that the Special Exception is for fuel storage, in the trucks to be parked there. Not in containers. He says Irving Oil already has offices there. He says this is an appropriate location for the additional parking area because this is in a commercial plaza and it's in the Highway Commercial District. He adds that this would not be detrimental or offensive to the neighborhood because it's already an existing commercial parking lot.

Mr. Brodeur asks how many vehicles will be stored there and how many spaces will this be. Attorney Grossman says it could fit 6 to 8 trucks and it will be 8 to 10 parking spaces.

Mr. Giuliano ask for clarification on why a Special Exception would be needed for this, questions if the concern would be the amount of fuel the trucks hold. Ms. Saunders reviews the definition of fuel storage from the zoning ordinance, which includes fuel stored inside parked trucks.

Mr. Gates asked if there was anyone to speak in support or in opposition of the applicant.

Gary Moffett, abutter to property states his concerns of noise as well as concerns of an oil spill that could affect the nearby pond, environment and wildlife.

Annalise Veno, an abutter to property states her concerns of hazardous waste decreasing value of their properties, unknown additional vehicles, hours of operation including emergency hours, noise, environmental concerns, avoiding water table with potential spills as well as noting that this property abuts a residential zone.

Beth Ruffner, an abutter to the property shares her concerns of pedestrian traffic being affected, truck traffic on the road, trucks pulling onto Rte 125, noise, and odor of trucks.

Donna Ianno, an abutter to the property shares her concerns of this changing the neighborhood, blind corner being an issue, time trucks would take to warm up, additional traffic through neighborhood, time notified prior to meeting to prepare.

Guy Ianno, an abutter to the property shares his concerns of noise, washing of trucks, possible leaks into the ponds affecting wildlife, odor of trucks, changing the neighborhood.

Letter ready by Ms. Saunders sent in by abutters Grace Armano and Brian Healey states concerns of noise, pollution, disruption to property values and concern of potential spills and vapors and the effect they can have on environment and health.

Jerome Grossman speaks again to clarify that they are in a Highway Commercial Districts and trucks are allowed, that the only reason they are before the board is because they have fuel in them. He also clarifies that the rest would be addressed by the Planning Board as part of the site review process.

Corey Canning who represents Irving Energy for environmental and safety for US businesses. He addresses concerns of abutters regarding leaks and spills stating they plan to put an oil water separator into facility, they will be paving the facility, it will be in accordance with EPA's SPCC requirements to prevent any run off from the site etc. States that there is no hazardous material that will be stored on site. Addressing the idling of trucks and that they intend to install glo-plugs or hot starts which will prevent cold starts for vehicles and idling for a long period of time.

Mr. Brodeur asks how close to Gear Road will they be, size of trucks, what types of fuel product will be there and hours of operation. Mr. Canning says they will be between 10 and 20 ft. to the road, they carry diesel, propane and fuel oil. The plan is to park 7 trucks there in 8 spots, and normal operating hours are between 6AM to 4PM with heating season being busier. He also adds that there will be no storage containers or storage tanks onsite, there will be no customer traffic, and they plan fully securing and enclosing the facility with an automatic gate.

Mr. Giuliano asked where the trucks fill up and how many days a week. Mr. Canning says they have fill stations all over the state and they do not operate all of their trucks 7 days a week unless it's heating season depending on how cold it is.

Chair Gates asked if they do emergency deliveries in the middle of the night and where are the trucks stored and why they are moving them. Mr. Canning responds, yes they do emergency deliveries when needed, the trucks are currently stored on Amarosa Drive but this property was recently sold and new owners need the space.

Mr. Brodeur asks if the Planning Board has to review this as well. Ms. Saunders says yes.

Guy Ianno comes back up to speak with additional concerns of mechanic work being done and washing the trucks. Mr. Spector. Chair Gates and Ms. Saunders clarify that this is about the storage of fuel in the trucks is all that's before the board, all the other details will be addressed by the Planning Board.

Ms. Saunders says legal council had no major issues with this.

*Mr. Brodeur motions to grant the Special Exception with the limit of 4 Trucks. Mr. Spector seconded the motion. Roll call vote, motion fails with 1 to 4 in favor.*

*Mr. Giuliano motions to grant the Special Exception with a limit of 6 Trucks. Mr. Hayden seconds the motion with an amendment to add screening for Gear Rd abutters. Roll call vote passes 3 to 2.*

**Z-21-15 Acacia, LLC** Seeks a *Variance* from Table 18-A and Section 19.2.E to permit the conversion of an existing 12-unit office building to a multifamily 12-unit residential building with less land area than required.

**Location:** 165 Charles Street, Rochester, Map 128 Lot 221 in the Neighborhood Mixed Use Zone.

Jerome Grossman presents for applicant. He reviews the case and 5 Criteria needed to allow 12 commercial units to 12 residential units on this property with no change to the building structure, just renovations. Also requesting to the density be allowed for the 12 units on the lot which is 40,510 sq ft.

Dave Carignan, abutter to property asking for details of the project including traffic flow and parking. Ms. Saunders explains that will all be reviewed with the Planning Board and that this hearing is simply to allow the use and density.

Paul Delisle, the developer speaks explaining that his intention is to put in 12, one bedroom, market rent units which would be less of a burden on the school systems and explains that there is a large need for these.

Ms. Saunders says legal council had no major issues with this.

*Mr. Spector motions to grant both Variances as presented. Mr. Giuliano seconds the motion. Motion carries unanimously by roll call vote.*

**Z-21-16 O'Keefe Martin** Seeks a *Special Exception* from Table 18-C to permit a food stand/food truck.

**Location:** 88 Milton Road, Rochester, Map 210 Lot 6 in the Highway Commercial Zone.

John O'Keefe presents reviewing the 5 questions explaining that it's an appropriate place that won't affect the residential.

Mr. Spector asks if the plan is to have a food truck there every day. Mr. O'Keefe says that it could be every day since the store is open every day.

Mr. Giuliano asks about hours of operation. Mr. O'Keefe was unsure at this time since they would be renting that out to someone else. Ms. Saunders clarifies that the decision goes with the land and whomever does come in would not need to go before the board, again.

*Mr. Spector motions to grant the Special Exception with the limit of operation hours from 11:00AM to 7:00PM. Mr. Brodeur seconds the motion. Motion carries unanimously by roll call vote.*

**Z-21-17 Hope on Haven Hill, Inc.** Seeks a *Variance* from Table 18-B to permit an office and meeting room in the Residential-2 zone.

**Location:** 38 Charles Street, Rochester, Map 125 Lot 214 in the Residential-2 Zone.

Email read by Ms. Saunders from Attorney Eric Tolbert, applicant's representative requesting a postponement until the August meeting.

*Mr. Spector motions to continue to August meeting. Mr. Giuliano seconds the motion. 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. Giuliano to adjourn at 8:23pm. The motion carried unanimously.*

Respectfully Submitted,

Dee Mondou,  
*Building & Licensing Administrative Assistant II*

and

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