

City of Rochester Zoning Board of Adjustment

Wednesday September 8, 2021

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on October 13, 2021)

Members Present

Bob Gates, *Chair*

Larry Spector, *Vice Chair*

Leo Brodeur

James Hayden

Michael King

Members Absent

Terry Garland, *excused*

Alternate Members Present

Paul Giuliano

Matthew Winders

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

Crystal Galloway, *Planner I*

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 the Planner I conducted roll call.

3. Seating of Alternates:

No alternates were needed.

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Spector to approve the minutes from the August 11, 2021 meeting. The motion carried unanimously.

5. New Cases:

Z-21-19 Ronald & Michelle Balcar Seeks a *Variance* from Section 23.3.1(d) to permit an accessory dwelling unit larger than the 800 square feet allowed.

Location: 20 Peaslee Road, Rochester, Map 253 Lot 47-13 in the Agricultural Zone.

David Balcar presented the five criteria. He said an area larger than 800 square feet will provide adequate living space and privacy for his mother. The larger space will provide space to move around more freely and with ease in case she ever needs a wheelchair. Mr. Balcar said the house with an in-law suite will increase the property value for the surrounding homes. He said the house will not be visible from the road with the in-law suite behind the house making the public unaware it will be there.

Mr. Gates asked if there was anyone present wishing to speak in opposition of the applicant. No one from the public was present.

Mr. Gates asked if there was anyone present wishing to speak in favor of the applicant.

The applicant's builder Tim Noonan told the Board the proposed home is the type of home we want in this community with the growth the City is trying to promote. He said it is a very large home and they are trying to get the influx of people that want to have a desire to live in this community. Mr. Noonan said the applicant's mother lived in a very nice 4,000 to 5,000 square foot house and is accustomed to that size. He said they have worked with the architects for a while to get her to agree to the proposed size.

There was no one further from the public to speak. Mr. Gates closed the public hearing.

Mr. Gates asked what the legal opinion from the City is. Ms. Saunders told the Board Legal Counsel's opinion is the applicant did not meet the five criteria and did not prove an unnecessary hardship.

Mr. Brodeur asked how many square feet they are requesting. Mr. Balcar said the in-law suite they are proposing is 1,320 square feet.

Mr. Brodeur asked how big the main house will be. Mr. Balcar said it will be 4,500 square feet with three people living in it.

Mr. Hayden asked if the five bedrooms that are proposed includes the accessory dwelling unit. Mr. Balcar said the main house will have four bedrooms and the addition will have one bedroom.

A motion was made by Mr. Brodeur and seconded by Mr. Spector to deny case Z-21-19 as presented because the criteria for an unnecessary hardship has not been met. The motion carried unanimously by a roll call vote.

6. Request to Rehear:

Z-21-14 Request for Rehearing for Special Exception at 323 Gonic Road.

Mr. Gates asked for the City's opinion. Ms. Saunders told the Board Legal Counsel didn't see any error in the Board's original decision and there has been no new information presented.

Ms. Saunders read the following letter into the record that was submitted to the Planning Department earlier in the day:

My name is Mark Young and I live on 14 Gear Road, Gonic. I am writing you today to ask for your assistance. Please view the minutes and the video of the hearing we attended on July 14th. On Wednesday July 14th a public hearing before the City of Rochester Zoning Board of Adjustment was held to receive public input on a proposed development.

Applicant: Astoria Blvd Realty Corp.
Location: 323 Gonic Road
Map 258 Lot 61
Zone: Highway/Commercial
Case: Z-21-14

Seeking a special exception from Section 18.5 to permit parking of fuel trucks in a 7,000 square foot area in the Highway/Commercial zone.

My neighbors are going to appeal the ruling of the Zoning Board of Adjustment. As the narrative describes, the proposed use meets all criteria. However, if you break the 5 points, in fact, it meets none of the bullets regardless of the fact that it is commercial use with parking. The space is current usage is incorrect as well. I also have questions about the allowed hours of operation for this site for example is it 7:00am – 9:00pm and or 24/7? How many of the 5 points needed to be disputed before passage of the exception? The neighborhood coalition would like to set a time to meet and discuss the site and city ordinances with you.

Five points of considerations governing, granting special exceptions area as follows. The applicant's answers disagree with the abutters answers.

1) The specific site is an appropriate location for the proposed use or structure.

Applicant = Yes

- NO – not as use for the land/structure as diesel truck fuel storage up to 21,000 gallons

2) The proposal is detrimental, injurious, obnoxious, or offensive to the neighborhood.

Applicant = No

- YES – detrimental (property values) (Obnoxious and offensive to neighbors).

3) There will be undue nuisance of serious hazard to pedestrian of vehicle traffic, including the location and design of access way and off street parking.

Applicant = No

-YES – undue nuisance of truck traffic access way blind spot on and off Gear Road, pedestrians walking up and down Gear Road, Cemetery Road. Access onto and off of 125 with 50 mph speed limits. The trucks will surely use Gear Road access over Route 125.

4) Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use or structure.

Applicant = Yes

-NO – Utilities; no power to plug trucks in for winter use. Spill containment.

5) The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan.

Applicant = Yes

-NO – This particular site is surrounded by Residential 1 and Agricultural land. This site is out of place and surrounded by wetlands.

We look forward to hearing from you on this issue.

Regards,
Mark Young

Mr. Hayden asked if the applicant will have to go before the Planning Board. Ms. Saunders said there has not been a submittal to date but yes, they would need approval from the Planning Board. Mr. Hayden asked if the Planning Board would look at screening, site distance, and spill prevention. Ms. Saunders said yes, they would look at all of that.

Mr. Winders being a new member said he went back and watched the meeting and after reading the submittal for the request for rehearing he didn't see there was any new information brought forward.

There was a brief discussion regarding the parking lot and the bylaws for the complex.

Mr. Gates said he spent some time in the parking lot and also called a few fuel companies to see what their policies are regarding letting trucks warm up. He said he was told if the driver is letting the truck warm up more than a half hours the owner gets on them because he wants that fuel delivered because that's how the company makes money and stays in business. Mr. Gates said it is not customary for trucks to warm up for an extended period of time. Mr. Gates said regarding the noise issue, the 100 decibels that is mentioned in the letter; when people come before the Board with that type of information he would like to see a qualified engineers report to stipulate what the actual decibel level of a truck is. He said that kind of information is essential for the Board to know because people can come before them and say whatever they want and the Board has no way of knowing if the information is true or not.

A motion was made by Mr. Brodeur and seconded by Mr. Spector to deny the request for rehearing case Z-21-14 because there was no new information submitted by the requester, and the board did not feel it had erred. The motion carried 4-1 on a roll call vote. Mr. King abstained.

Z-21-05 Request for Rehearing for Admin Appeal at 107 Betts Road. David Waleryszak

Mr. Winders told the Board he was not yet appointed to the Board at the time this application was originally heard but he did have the benefit of watching all the hearings sequentially to each other. He said based on what he saw it was clear that between the applicant and the property owner defending the decision that was made on his property, there was a lot of back and forth discussion before the Board. Mr. Winders said that combined with the fact the application was continued multiple times made the hearing process quite complicated. He said he was able to watch the hearings all in one sitting and it became clear that the Board never opened the public hearing and for that reason he felt that the Board should grant the applicant a rehearing.

Mr. Gates agreed that if the Public Hearing was not held the board had erred and the application needs to be reheard.

A motion was made by Mr. Spector and seconded by Mr. Brodeur to grant the request for rehearing case Z-21-05 due to the fact there was a procedural error. The motion carried unanimously by a roll call vote.

7. Other Business:

There was no other business to discuss.

8. Adjournment:

A motion was made by Mr. Brodeur and seconded by Mr. Spector to adjourn at 7:24pm. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development