

City of Rochester Zoning Board of Adjustment

Wednesday October 13, 2021

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on November 10, 2021)

Members Present

Bob Gates, *Chair*

Larry Spector, *Vice Chair*

Leo Brodeur

James Hayden

Members Absent

Terry Garland, absent

Michael King, absent

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 Secretary conducted roll call.

3. Seating of Alternates:

Mr. Gates placed himself, Mr. Spector, Mr. Brodeur, Mr. Hayden, and Mr. Giuliano as voting members for the meeting.

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Spector to approve the minutes from the September 8, 2021 meeting. The motion carried unanimously.

5. New Cases:

Z-21-20 Desi Brown Seeks a *Special Exception* from Table 18-E to permit a residential kennel.

Location: 98 Hansonville Road, Rochester, Map 259 Lot 60 in the Agricultural Zone.

The applicant was not present at the meeting.

A motion was made by Mr. Brodeur and seconded by Mr. Hayden to continue case Z-21-20 to the November 10, 2021 meeting to allow the applicant to be present. The motion carried unanimously.

Z-21-21 Public Service Company of NH (Eversource Energy) Seeks a *Variance* from Table 18-D to permit the expansion of the existing warehouse use in the Residential-1 zone.

Location: 74 Old Dover Road, Rochester, Map 136 Lot 20 in the Residential-1 Zone.

Nick Golon of TF Moran presented the Variance. Mr. Golon explained the existing facility has been in service for over 40 years and includes Eversource office, garage, and storage yard. Mr. Golon said they are proposing a 2,600 square foot vehicle enclosure which will be located in the northwest corner of the storage yard in the area where utility poles are currently being stored. He said there is a substantial evergreen tree buffer between the facility and the existing residential homes.

Mr. Golon said they are seeking relief from Section 18.1 to expand the existing use in the residential zone. He said granting the variance would not be contrary to the public interest because the requested variance will allow for expansion of an existing use that has been in continuance service for over 40 years. For the purpose of providing covered parking for Eversource's emergency line trucks which provide an essential service to the general public.

Mr. Golon said if the variance is granted the spirit of the ordinance would be observed because the requested continuation of the use would not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood given the use was established in 1980.

Granting the variance would do substantial justice because any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under the specified design of the proposed vehicle enclosure, the gain to the public will not outweigh the harm to the applicant as the public is protected equally in either case. The proposed expansion will enable Eversource the ability to continue to use the property for the purposes of providing essential emergency and maintenance services to the electrical infrastructure which it serves.

If the variance is granted the value of surrounding properties are not diminished because Eversource has continuously operated the site as an Area Work Center dating back to 1980. As the industrial character of the site has already been established, the value of the surrounding properties already reflects the use and no diminution in value would be expected from the authorization of the requested variance.

Denial of the variance would result in an unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance because relief from the allowable use specified by the ordinance can be provided without frustrating the purpose of the ordinance in that the overriding factor of the safety of the public is observed. Special conditions pertaining to this property that distinguish it from other properties includes the existing use of the site as an Area Work Center and its proximity to the existing electrical infrastructure which it serves. Denial of the variance would result in an unnecessary hardship for the owner and would not promote a public

interest as emergency and maintenance services of the electrical infrastructure are an essential public service.

The property is unique and has special conditions that meet the criteria of an unnecessary hardship as it is presently occupied by Eversource's Rochester Area Work Center. A denial of this variance for the continued use of the property to serve its purpose as a supporter of an essential public utility would negatively impact the ability of the property owner to have reasonable use of the lot.

Mr. Gates asked if there was anyone present to speak in opposition of this application.

Linda Yerardi of 42 Meadow Lane said she and her husband have lived on Meadow Lane for 26 years now and have had off-and-on concerns with the Eversource property; increasing in frequency since 2016. She read a statement that reads as follows: I have copies of emails that I sent in February of that year as it became quite bad during that Winter, especially. In June of 2016, several neighbors and I met at City Hall to hopefully get some relief and buy-in from Eversource that something had to be done. We met with Catalina Celentano and several city officials to address concerns and seek solutions. She was very receptive as their Community Representative and did state that they wanted to be "good neighbors." Unfortunately, in the five years since, many of our concerns still exist!

Being that we are a little further down, the impact of everyday noises and exhaust emissions has not been as noticeable to us as to our neighbors who live directly across from the location, however, we have seen increased traffic, trucks, and the incredible "booms" when they drop debris into/empty the dumpsters can be startling at times. And, the back lot has become more of an issue for us as it is diagonally across from our lot. It is here where they open the back fence gates and plow the snow out of the lot into the woods and it is VERY loud! I understand they have a business to run, but they are in a residential neighborhood WHOSE MAKE UP HAS CHANGED CONSIDERABLY IN THE LAST 20 YEARS. Their point of being "located here for 40 years" really has to be examined; is it time to move the operation to an area that is commercially zoned and will allow them to expand and operate under fewer constraints? How many more additions/expansions will they request?

As part of our meeting in 2016, it was agreed that a fence would be installed to 1) help with the noise; and 2) help with esthetics in order to keep our property values up. The fence that I mentioned at our meeting with Catalina (tall, sound proofing, pleasant looking like other businesses install along property lines) was NOT installed and instead a six foot (?), wooden fence with no sealant or paint was installed. How do you think that looks now? Panels have fallen over, but in my walk by there today, it does seem like they have put them back up. This is NOT what we need here! I have attached photos that show it is not tall enough to block noise, vehicles, buildings, emissions, and is also now weathered, graying, and will soon start to rot away. Again, not what we wanted. This company has enough resources to put up an appropriate barrier that will help address many of our concerns.

In closing, I really can't say that my husband and I support the expansion/addition of the new structure. We totally understand the need, but until the acceptance by Eversource that this neighborhood is NOT what it was 20 years ago, never mind 40 (irrelevant now), and takes some steps to help improve the site location for the residents that abut the property, it is our feeling that a commercially zoned location may be what is needed.

Steven Chasse of 56 Meadow Lane said he has great concerns of the noise that continues with the dumping of dumpsters that happen at early morning hours (also the truck driver sounds the air horn to have the gate opened to the facility). He has contacted Eversource via email on a few occasions. Their response was for him to contact the company that owns the dumpsters. He thought that they would have more say as to when the dumpsters should be dumped. All he asked them was to have the dumpsters dumped after 9am in the morning. His wife is a nurse and works until midnight and would like to not have all the banging at 7:30 in the morning.

He has lived here for 12 years and there is more equipment in the lot from other companies especially during storms. The other companies leave their trucks idling for at least 15 minutes. They are a growing company and need to expand. They own property outside the gated area and he is concerned they will expand into that. When will it stop? They need to move into an industrial area.

There was no one else from the public present to speak in opposition. Mr. Gates asked if anyone was present to speak in favor of the applicant. There was no one present; Mr. Gates brought the discussion back to the Board.

Mr. Gates asked what the City's opinion is. Ms. Saunders explained the City's Legal Counsel did not provide an opinion because staff was told by the applicant no one would be at the meeting to present.

Ms. Saunders read the following letters that were received via email:

I am reaching out in regards to the hearing taking place on October 13 in response to Eversource's zoning request. I am unable to attend but wanted to express my concerns. Their operation causes a significant disturbance for us as surrounding neighbors and I am concerned that this structure they are proposing is only going to make that worse.

I live at 44 Meadow Lane and moved in October of 2018. I have two little girls and we were very happy to be moving to this neighborhood because I had heard so many good things about it. It didn't take long for me to feel extremely disappointed and have some concern for the amount of noise coming from Eversource. We often hear sounds like an alarm is going off, much like you would hear for a fire alarm at a commercial building. I have been told it may be their gate alarm. It's quite a nuisance.

I can't tell you how many mornings I am getting my kids ready for school and all I hear is diesel trucks running or driving in and out of the parking lot. Often, we also hear loud bangs and other noises, possibly from loading equipment in or out of trucks.

The current Eversource operation already has a significant impact on the quality of life to us as surrounding property owners, and it seems little has been done to minimize this. While there is a fence along their property line, it is a simple wood fence that does not do much, if anything, to lessen the noise.

Also, the claim of a tree buffer around their property is overstated. The reality is that the trees are thinner now than in the pictures they provide, and I can assure you that they do little to shield us from Eversource. I feel it is also worth noting that we live in New Hampshire and that most of these trees will lose their leaves. The pictures provided, though apparently from Google street view, show features of my property that have not existed since before I moved in.

As an abutting property owner, I feel strongly that no expansion should be permitted for Eversource. This industrial property already has a significant impact on our residential area, and continued expansion will only make that worse.

I have attached a few photos below that are current. One at night to show how little buffer there really is.

Thank you for your time
Jamie Winn, 44 Meadow Lane

Due to short notice of hearing and previous work commitments, we are unable to attend the hearing. I would however like to express my major objection to any further expansion of the Eversource property.

When we first considered purchasing our property, we had concerns about how Eversource would be as neighbors. We parked at the property several times, at various hours. We decided that negatives were not substantial, so we proceeded with our purchase.

In the last 20 years much has changed. We have seen the traffic in the back lot grow significantly. Along with that the noise has increased, both day and night. Eversource has allowed contractor vehicles to park in the back lot and side parking lot with those vehicles being started at 5:30-6:00 in the morning and running for 30 minutes with no regard to the effect on neighbor's quality of life. More frequent emptying of dumpsters at early hours being one of the most disturbing sounds. Extended idling of diesel vehicles to the point of dealing with exhaust fumes drifting to our yard, causing discomfort. Allowing snow plow contractors to dictate a plowing schedule, rather than Eversource giving times that were acceptable and not disruptive. I know sometimes it is unavoidable but we have been disturbed too many times over the years by plowing at unnecessarily early hours.

Several years ago another variance was proposed to install the current shelters on the property. We attended the meetings and visited the site to address concerns. We reluctantly agreed not to object. That was a mistake. The shelter have become similar to a concern venue, echoing sounds beyond the property. We have contacted management of the site many times over the years, sometimes with positive responses, sometimes ignored.

It was bad enough that a few years ago, a more solid fence was erected in an effort to block some noise. It was only mildly effective.

In the package we received was pictures, up and down Meadow lane. They do not give the true nature of the natural barrier.

This is my view out my living room window, directly in line of site to the proposed building.

My fear is a third building, facing directly at me, would increase the deflection of noise right at me.

It is my feeling that the property has outgrown the residential neighborhood that surrounds it. They really should be pursuing property in the environment that fits their mission.

We have been good neighbors to them, watching the property for illegal activity and reporting them to police. On a couple occasions sharing home security videos to assist.

We appreciate what efforts Eversource has made to good neighbors but we have to object to this proposal.

Respectfully submitted,

Jeffery and Michelle Loring
50 Meadow Lane
Rochester NH 03867

I am writing in reference to the expansion plan of PSNH, Case # Z-21-21, seeking a variance. I wish that I could personally attend the meeting on October 13 but I am working in Chad, Africa and will not return home until Christmas. However, that being said, I am totally against this variance and will do everything in my power as a citizen to stop this. We have had many issues with PSNH on the level of noise at the facility. They have grown too large for this area and need to move to a commercial area. That is truly where they belong. We as tax payers should not have to deal with the level of noise and cannot even enjoy a peaceful day off in our own back yard. I and my neighbors as well, have complained multiple times. Some issues have been addressed satisfactory while others continue, especially late at night, and especially with the night mechanics that are there until midnight. I respect the job and mission that they do but like I stated above they need to move to a commercially zoned area. I am only available to discuss this by email but a day and time can be arranged for me to call in if you request.

Thank You,

Gill Colon Jr
7 Weeping Willow Dr.
Rochester, NH 03867

Mr. Gates asked if Eversource has made any request of the trash collector to come later in the day to empty dumpsters. Mr. Copeland of Eversource explained he is new to the company and wasn't made aware of the issue but said he will address it.

Mr. Brodeur asked if Mr. Copeland is a local representative or out of state. Mr. Copeland said he manages all of New Hampshire facilities.

Mr. Brodeur asked if the four vehicles are new or if they are already at the Rochester facility. Mr. Copeland explained they are at other facilities. He went on to explain, that as weather conditions permit and they need to have them staffed, the vehicles would be pulled in and stored.

Mr. Spector asked why the height has to be thirty feet high. Mr. Copeland said it's because of the height of the truck. Mr. Golon further explained they need an additional clear height for the two trucks parked on the sides.

Mr. Gates closed the public hearing.

Mr. Gates said he is concerned if the variance isn't granted it will put neighborhoods in Rochester in a condition during an outage where they're waiting an extended period of time to get back online.

Mr. Winders suggested adding a stipulation regarding building up a better buffer for the abutting properties.

Mr. Gates added a stipulation that Eversource insists the dumpsters be emptied at a more reasonable time, preferably after 9:00am.

A motion was made by Mr. Hayden and seconded by Mr. Giuliano in the case Z-21-21 to grant the Variance with the following conditions: 1) the applicant work with the abutters and the Planning Department to increase the screening through both vegetation and fencing; 2) the applicant shall set a time for trash pick-up no earlier than 9:00am; 3) all utility vehicles are to be parked within Eversource's facility; 4) limit of 4 additional trucks. The motion carried by a 4-1 roll call vote. Mr. Brodeur opposed.

Z-21-22 Packy's Investment Properties, LLC Seeks a *Variance* from Section 20.2(H) to permit the construction of a storage facility within the 100' front setback area, and within 75' from a residential use.

Location: 18 Sterling Drive, Rochester, Map 208 Lot 18-1 in the Granite Ridge Development Zone.

FX Bruton of Bruton and Berube, PLLC explained any construction of a mini storage facility must be 100 feet from the front property line, as well as 75 feet from any abutting Residential use. He said given the unique characteristics of the property and the location of Sterling Drive they believe granting the relief request would be appropriate.

Mr. Bruton went on to read through the five criteria. He said the variances will not be contrary to the public interest because the use will be consistent with an existing planned and approved use and will adhere to typical setback requirements, without visibility to the travelling public along Route 11. In addition, the project will not be visible to the existing residence.

The variances will not be contrary to the spirit of the ordinance because the use in question is suitable, considering the location, buffering and lack of visibility to the general public and the residence. With the presumption that the 100 foot and 75 foot restrictions have no relationship to safety concerns, but more as to location and visibility of the structures themselves away from the general public and a residential use, in this instance, the need for such a large setback seems unwarranted given the characteristics of the proposal.

The rule in determining whether the requirement for substantial justice is satisfied is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The Board typically looks at whether a proposed development is consistent with the area's present use. The grant of the variances would result in substantial justice as such would allow the property to be utilized in a similar to the approved use on the adjacent lot. The lack of frontage, the 100 foot requirement and the 75 foot restriction are unnecessary given the location of the lot, which has no visibility to Rout 11 or to the general travel through Rochester or to the residence.

The value of surrounding properties will not be diminished because it is believed, and therefore averred, that the location of the proposed storage structures, still meeting standard setback criteria, and considering the existing use of the surrounding property, particularly with a lack of visibility for the residence, will not result in a diminution of surrounding property values.

The property contains unique characteristics as it is smaller than other lots on Sterling Drive. Assuming the purpose of the 100 foot and 75 foot setback requirements for mini-storage relates to locating such uses away from major streetscapes within Rochester and visibility to residential uses, imposing the restrictions, as they relate to the property, is unnecessary given the down-slope nature of the parcel, the existing buffering between the property and Route 11 and the residence, and given the surrounding existing and approved uses on the other two adjacent lots. Given the affect the new development will have with respect to resulting in no negative affect as to the health, safety, and general welfare of the inhabitants of the City, as outlined herein, and given the existing and proposed use of the property, it is respectfully submitted that granting the variance would not result in a conflict with the general purpose set forth within the Zoning Ordinance, but would rather promote the general purpose of the ordinance.

Mr. Spector asked where the residential home is located. Mr. Bruton explained the home is 130 feet away from the proposed facility and there is a tree line that separates the two properties.

Mr. Gates opened the public hearing.

Clifton Jones of 127 Farmington Road said he can see the other storage facility that is going in across Sterling Drive, so he definably would be able to see this proposed facility. He said he is concerned about his resale value should he want to sell his home in the future. Mr. Jones asked if this will be a 24-hour facility.

There was no one further from the public present to speak; Mr. Gates brought the discussion back to the Board.

Mr. Brodeur asked if solar panels will be set on this lot. Applicant Packy Campbell explained solar panels are an accessory use to the storage facility. He said the use of solar is requested in the Zoning Ordinance when constructing ministorage facilities.

Mr. Giuliano asked the abutter if the other businesses around his property are bothersome. Mr. Jones said those businesses were there before he purchased the property and he understands the other lots may be developed. He said his concern is what they will be used for and the height of the structures.

Mr. Bruton said he provided photos of the property to the Board and he wasn't able to see a residential use when he was there.

Mr. Spector said he is concerned the applicant has not met the hardship criteria.

Mr. Gates asked for the hardship criteria be explained again. Mr. Bruton said the unique characteristics of the property, the location, the small industrial park aspect, and the suppression from Route 11 where there is no visibility is the unnecessary hardship.

Mr. Brodeur asked what the legal opinion is. Ms. Saunders explained Legal Counsel has concerns because the distance requested was not shown on the plan. She said we now know the structures are within 36 feet of the residential property line which is to be a 75 foot setback and within 45 feet of the Sterling Drive property line which is the 100 foot setback. Ms. Saunders explained Legal Counsel's thought process was if the Board thought the criteria was met he felt a small reduction could be necessary but if it was a large reduction he has some concerns.

Mr. Bruton said in light of Legal Counsel's concerns it would make sense to continue the case so the applicant can look at those concerns along with the concerns of the abutter as well.

A motion was made by Mr. Spector and seconded by Mr. Giuliano to continue case Z-21-22 to the November 10, 2021 meeting as requested by the applicant. The motion carried unanimously.

Z-21-23 SSG, LLC Seeks a *Variance* from Sections 19.2.E; 20.2.K.3; and Table 19-B to permit the construction of a 52-unit multifamily development in the Highway Commercial zone without a commercial use.

Location: 29 Wadleigh Road, Rochester, Map 137 Lot 35-1 in the Highway Commercial Zone.

Abigail Karoutas of Wyskiel, Boc, Tallinghast & Bolduc, P.A. explained the applicant is seeking three variances from the Ordinance in order to construct a 52-unit apartment complex on the property which will provide much needed housing for this quickly growing area. Ms. Karoutas said the property is unique in that it is triangular in shape, it is bordered on the west by the Spaulding Turnpike, the north and east by the Axe Handle Brook, and the south by Wadleigh Road and the Anchorage Inn. She explained the parcel is general landlocked except for the Wadleigh Road access. Ms. Karoutas explained there is a 50 foot no cut buffer along the Spaulding Turnpike which insulates the property from the highway and also provides additional cover and screening.

Ms. Karoutas explained the first variance they are seeking is from Section 20.2.K.3 which requires a commercial use in conjunction with a residential use when in a commercial district. The second variance is from Section 19.2.E which has to do with the density calculation. The third variance is from Table 19-B which permits a maximum of three stories in a commercial zone.

Ms. Karoutas said the variances and spirit of the ordinance would not be contrary to the public interest because none of the three variances conflict with the purpose of the zoning ordinance and do not alter the locality or threaten the health, safety and welfare.

Ms. Karoutas said these lots are intended to deal with high volume automobile traffic and less stringent approaches are suggested. She said they are seeking a variance from having a commercial use on the lot because you can't see it from the road and no commercial use will want to go in somewhere that's 900 feet off the main road. Ms. Karoutas said the increase from 48 units to 52 is a minimal impact to the site.

Ms. Karoutas explained they are seeking a variance to construct a four story building where three is allowed because of the slope of the property. She said it will be three stories in the front and four stories in the back which will allow maximum use of the lot without extra grading, leveling and bringing in extra fill. She said doing so is not contrary to the spirit of the ordinance because the environmental issues that would be caused by doing the extra work can be avoided by allowing for four stories. Ms. Karoutas said granting the three variances would not diminish the surrounding property values because the property is screened on one side by the Spaulding Turnpike, on the other by trees to the Axe Handle Brook, and is set back from Route 125 by 900 feet. She said the use with the Anchorage Inn in front of the site is a compatible one. Ms. Karoutas said there is a hardship because of the location and topography of the lot which can be addressed by granting the three variances.

Mr. Hayden asked if the existing cell phone tower has any easements. Ms. Karoutas said there are easements and the driveway will be constructed in such a way to accommodate those easements. Mr. Hayden asked if there is a fall zone for the tower. Applicant Fenton Groen explained there are two types of cell tower, one that is supported by guide wires, and there's self-supporting. He said this is a self-supporting tower and is designed that if they fail, it will fail in the middle and will fold against itself and will not touch anything outside the perimeter of the chain-link fence.

Mr. Gates opened the public hearing.

Caroline Lewis of Cedarbrook Village said she is concerned with another potential multifamily development because there is already a large multifamily development proposed across Axe Handle Brook. She said she hopes the Conservation Commission is able to review this proposal because of its close proximity to the brook.

Jayjay Patel, owner of the Anchorage Inn said he is in support of this development because it will add a lot of value to that area of the city.

There was no one further from the public present to speak; Mr. Gates closed the public hearing and brought the discussion back to the Board.

Mr. Spector expressed his concern regarding the cell tower. He said the Board deals in facts and isn't comfortable making a decision without speaking to an engineer.

Mr. Gates asked for Legal Counsel's opinion. Ms. Saunders said Counsel thought the height and density request met the criteria. As for the commercial use, the Board should strongly consider whether the applicant meets the hardship criteria and the spirit of the ordinance criteria since this is in the Highway Commercial zone.

A motion was made by Mr. Hayden and seconded by Mr. Giuliano to grant the variance for Section 275-20.2.K.3 because it meets the spirit and hardship of the ordinance. The motion carried by a 4-1 roll call vote. Mr. Spector opposed.

A motion was made by Mr. Giuliano and seconded by Mr. Hayden to grant the variance for Section 275-19.2.E because it meets the criteria. The motion carried by a 4-1 roll call vote. Mr. Spector opposed.

A motion was made by Mr. Hayden and seconded by Mr. Giuliano to grant the variance for Table 19-B. The motion carried by a 4-1 roll call vote. Mr. Spector opposed.

6. Other Business:

Mr. Spector asked Staff to update the Board's webpage of the City site.

7. Adjournment:

A motion was made by Mr. Brodeur and seconded by Mr. Spector to adjourn at 8:59pm. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development