

City of Rochester Zoning Board of Adjustment

Wednesday December 8, 2021

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on January 12, 2022)

Members Present

Larry Spector, *Vice Chair*

Leo Brodeur

James Hayden

Michael King

Members Absent

Bob Gates, *Chair*, excused

Paul Giuliano, excused

Alternate Members Present

Matthew Winders

Staff: Crystal Galloway, *Planner I*

Ryan O'Connor, *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.

Call to Order

Mr. Spector called the meeting to order at 7:00 p.m.

Roll Call

The recording secretary, Ryan O'Connor, conducted the roll call.

Seating of Alternates

Matthew Winders voted for Paul Giuliano.

Approval of minutes from November 10, 2021

Leo Brodeur made a motion to accept the minutes from November 10, 2021. The motion was seconded by James Hayden. The motion carried by a unanimous voice vote.

New Cases:

Z-21-27 Steven Hartford Seeks a *Variance* from Section 23.2 to permit the construction of a shed within the 10 foot setback. ***Public Hearing***

Location: 5 Wilson Street, Rochester, Map 128 Lot 249 in the Residential-1 Zone.

Steven Hartford, owner of 5 Wilson Street discussed his need for a variance for the construction of a shed within the 10 foot setback. Mr. Hartford stated he

Mr. Spector stated the board needs to vote on the need for a certified plot plan. Mr. King asked if there was a particular reason why the shed is 4 feet from the property line. Mr. Hartford stated that he is restricted in his back yard, if he moved it any further from the property line it would be closer to the middle of the property and it would encroach in the backyard and block the gate, he uses to get rid of leaves. Mr. Winders asked if the fire pit shown in the sketch is built in or moveable. Mr. Hartford stated that it is moveable. Mr. King suggested that the fire pit could be moved. Mr. Brodeur asked how big the firepit is. Mr. Hartford said it is maybe 30 inches. Mr. King suggested that the applicant move the shed 4 additional feet from the property line.

Mr. Spector stated he would like to get a vote in if the applicant should get a plot plan done.

Mr. King made a motion to deny the need for a plot plan. The motion was seconded by Mr. Brodeur. The motion carried by a unanimous voice vote.

Mr. Spector asked Mr. Hartford if he would be willing to move the shed further from the property line. Mr. Hartford stated that he would rather not, but if he doesn't have any other option he would move it.

Mr. Spector opened the floor to the public to speak about this case.

Bill Selby, owner of 7 Wilson St, who is the direct abutter of the proposed case stated that he has no concerns or issues with where the shed is going to be placed. Mr. Selby stated he believes that it is not in a place where it would be a nuisance or block any views.

Crystal Galloway, Planner I, stated that the City has no issues with the proposed shed.

Ms. Galloway read an email in favor to the proposed shed. Berry Smith, owner of 4 Wilson Street, stated that the proposed request will not diminish but rather enhance the neighborhood. Mr. Smith stated that the quality of the shed will add to the ambiance of the neighborhood. The proposed location of the shed is an ideal location for Mr. Hartford and his abutting neighbors.

Mr. Spector stated he usually doesn't have any problem with this type of variance as long as the abutters are not opposed. Mr. Spector asked for a motion on the case.

Mr. Brodeur made a motion on case Z-21-27 to deny the request for the variance. The motion was seconded by Mr. Winders.

Mr. Winders made a motion to amend the motion and table the case for the January 12, 2022 meeting. Mr. King seconded the motion. The motion carried by a unanimous roll call vote.

Z-21-28 Patrick Casey Seeks a *Variance* from Table 19-A to permit the construction of an addition to a single-family home within the side setback. ***Public Hearing***

Location: 12 Orchard Street, Rochester, Map 117 Lot 5 in the Residential-2 Zone.

Patrick Casey owner at 12 Orchard Street discussed his need for a Variance for his single family home. Mr. Casey stated that his mother lives in the house alone and his Aunt will be moving in with this mother. The house is too small for both of them; therefore he would like to build an addition onto the single family home on the back of the home and within the setback.

No questions from the board at this time. No public input for this property at this time.

Mr. King made a motion to grant the Special Exception to case Z-21-28. Mr. Brodeur seconded the motion. The motion carried unanimously by a roll call vote.

Z-21-29 Randi and Ryan Watson Seek a *Special Exception* from Table 18-C to permit a foodstand. **Public Hearing**

Location: 264 Pickering Road, Rochester, Map 257 Lot 59 in the Industrial Zone.

Randi and Ryan Watson, owners at 264 Pickering Road, read the criteria for a Special Exception. Ms. Watson stated that they are looking to place a mobile hot dog cart on their property that will not disrupt the neighborhood or the traffic. Ms. Watson stated that if any utilities are needed by the City or State they will make sure that happens.

Mr. Hayden asked if there will be any public bathrooms. Ms. Watson stated that it will just be a hot dog stand, with a picnic table.

Mr. King asked if the hot dog stand will be powered by a generator. Ms. Watson stated that the hot dog stand is powered by propane or oil.

Mr. Spector opened the floor for the public to speak regarding this application. None seen to speak.

Ms. Galloway stated that the City has no concerns about this application.

Mr. Brodeur made a motion on case Z-21-29 to accept the Special Exception application. Mr. Hayden seconded the application. The motion carried unanimously by a roll call vote.

Z-21-30 Tri City Consumers' Action Co-Operative, d/b/a Infinity Peer Support Seeks a *Variance* from Table 18-A to permit a Community Residence-1. **Public Hearing**

Location: 55 Summer Street, Rochester, Map 117 Lot 68 in the Neighborhood Mixed Use Zone.

Attorney Keith Diaz represents Tri-City Consumers' Action Co-Operative, although they legally are called Infinity Peer Support. Attorney Diaz stated that Infinity is a Peer Support Agency that the State of New Hampshire has defined them as. Attorney Diaz stated that all the programs that Infinity provides are regulated, defined, and audited by the State of New Hampshire and the Federal Government. The state agency that oversees is the State of New Hampshire Department of Health and Human Service Bureau of Behavioral Health. Attorney Diaz stated that Infinity is contracted to provide nonclinical free mental health services. Attorney Diaz stated that his client has been operating as a Peer Support Agency within the City of Rochester at the Summer Street location since 2015, providing peer based mental health services. Attorney Diaz stated that there is a 10-year plan put in place by our Governor and legislature has offered a new program called "Step Up, Step Down" program. Attorney Diaz went over some of the key features of the program that Infinity is looking to provide on behalf of the state. Attorney Diaz stated that 55 Summer Street

would have a three-bed mental health program providing free short term recovery base transition services, which also includes a bathroom, storage space, a kitchen, and a telephone. Attorney Diaz stated that patients would need to be 18 years or older, a resident of the state of NH, the patient needs to be in psychiatric distress, the patient needs to participate in the program, the patient needs to be able to self-administer their own medications, and the stay can't exceed 90 days and, in some situations, may not exceed 30 days. Attorney Diaz stated the program provides 24-hour nonclinical peer support for the individuals that stay in the facility. Those that work at the facility are certified by the state. Currently Infinity provides a nonclinical mental health day program to roughly 25 people a day. Attorney Diaz stated that his client has hired an architect to show what the layout of the new floorplan would need to look like.

Ms. Galloway went over the definition of Community Residence-1 or Group Home. Ms. Galloway stated that this was the definition that fit the best with the application. Attorney Diaz stated that the program does not fit under the word dwelling due to the short stays that will be occurring within the program. Mr. Spector stated that the Board can only do what the city states

Mr. King asked if there are any beds currently within the facility. Attorney Diaz stated there are no beds. Mr. King asked how many additional employees there would be if the Variance was granted? Attorney Diaz stated 5 or 6 would be added.

Mr. Winders asked if the people that would be coming to the facility are violent and if any security would need to be on staff? Melissa Silva, Executive Director of Infinity, stated that most referrals will be coming from the Emergency Departments from surrounding hospitals. Ms. Silva stated that if someone is deemed to have violent tendencies then they are not appropriate for the facility and program they would be offering. Mr. Winders asked if Infinity consulted with a Real Estate Agent about surrounding properties and if their property values would diminish? Attorney Diaz stated that he has not consulted with a real estate agent.

Mr. Hayden asked if the daily mental health visits would continue along with the extended stays. Attorney Diaz stated that those would continue.

Mr. Spector asked to hear from the City Staff.

Ms. Galloway stated that regarding criteria A & B, granting this variance to 55 Summer Street would be contrary to the public interest and would violate the spirit of the ordinance. Regarding criteria D, granting this variance would diminish the values of surrounding properties. Regarding criteria E, the applicant has failed to prove an unnecessary hardship. Ms. Galloway stated that since the applicant has failed to prove all 5 criteria under 275-4.1.B(1) of the Zoning Ordinance, its variance application must be denied.

Mr. Spector stated that Attorney Diaz can address the City's response.

Attorney Diaz stated that there seems to be a misunderstanding with the way the City is characterizing the variance. Attorney Diaz stated that it is not a halfway house or a residence.

Mr. Spector stated that there is a difference between a day program and an overnight program.

Mr. Hayden stated that as far as public interest, there is a high need for places for people with drug addictions and mental health issues to go.

Mr. Winders stated the within the City Attorney's memo there was no consult from a professional about the real estate market surrounding the facility.

Mr. Spector opened the floor to the public to speak on behalf of this variance.

Janice Demeritt, owner at 63 Summer Street, spoke regarding this variance. Ms. Demeritt stated that back in 2015 when the facility first opened, she supported their business. Ms. Demeritt stated that they began

having problems with overdoses, people sleeping in car in the parking lot, and people going into their yards and using their water to wash up. Ms. Demeritt stated that there is also a daycare on Summer Street, and they have called the cops due to people doing drugs around the area. Ms. Demeritt stated that when Infinity took over the location, they have been better with less conflict from patients. Ms. Demeritt stated that she had her house evaluated and was told that it would be difficult to sell the property due to what is going on within the neighborhood. Ms. Demeritt stated that she would like proof from Infinity that what has happened in the past is not going to continue to happen going forward.

Ms. Silva responded regarding Ms. Demeritt's concerns. Ms. Silva stated that it will be a 24-hour, 7 days a week, monitored facility that offers peer support. Ms. Silva stated that she is aware of the prior reputation, but the people that are wondering around on Summer Street are not Infinity patients, they are coming from the Salvation Army and cutting through. Ms. Silva stated that they have a 9-person board of directors at one point voted no on the project but have recently changed the vote to yes to move forward with the program. Ms. Silva stated that since she has taken leadership over Infinity there have been only 3 calls to the Police Department, and she is in direct contact with the Chief of Police. Ms. Silva stated that she will not allow what happened in the past to happen again.

Mr. Winders asked if what occurred in the past is still occurring now. Ms. Demeritt stated that Infinity has helped make the area a little better than what it was once.

Mr. Hayden made a motion to approve case Z-21-30 as presented. Mr. King seconded the motion. The motion was denied by a 3-2 roll call vote.

Mr. Brodeur made a motion to deny case Z-21-30 based on the information provided by the City Attorney and the comments. Mr. Winders seconded the motion. The motion carried by a 3-2 roll call vote.

6. Other Business

No other business to be discussed.

7. Adjournment

Mr. Brodeur made a motion to adjourn the meeting at 8:05 p.m. Mr. Hayden seconded the motion. The motion carried by a unanimous voice vote.

Respectfully Submitted,

Ashley Greene
Administrative Assistant II

and

Shanna B. Saunders
Director of Planning & Development