

City of Rochester Zoning Board of Adjustment

Wednesday March 9, 2022

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on April 13, 2022)

Members Present

Larry Spector, *Vice Chair*

Michael King

Members Absent

Robert Gates, excused

Leo Brodeur, excused

James Hayden, excused

Alternate Members Present

James Connor

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.

Vice Chair Larry Spector called the meeting to order at 7:00pm and the Recording Secretary conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be Michael King, James Connor, Matthew Winders, and himself.

4. Approval of Minutes:

A motion was made by Mr. King and seconded by Mr. Winders to approve the minutes from the February 9, 2022 meeting. The motion carried unanimously.

5. Continued Cases:

Ms. Saunders took a moment to explain to the applicants in the audience that with only four Board members present, this was considered what is called a "Short Board". In this case, if the vote ended in a 2-2 tie, the vote would fail. With a full Board, if two members voted against the vote would pass. Because of this, the State law allows applicants to continue their hearing tonight to the next meeting to request a decision by a full board. Each applicant will be asked before their hearing what choice they would like to make on this.

Z-22-05 James Covey Seeks a *Variance* from Section 24.7.F to permit a home occupation to assemble food trucks.

Location: 6 Stacy Drive, Rochester, Map 205 Lot 42 in the Agricultural Zone.

The applicant requested a continuation to the April 13, 2022 meeting to allow a full board to be present.

Z-22-06 Sofield Apartments, LLC Seeks a *Variance* from Section 30.3.A to permit an expansion of a non-conforming use to allow additional multifamily dwellings in the agricultural zone.

Location: 287 Rochester Hill Road, Rochester, Map 254 Lot 18 in the Agricultural Zone.

The applicant requested a continuation to the April 13, 2022 meeting to allow a full board to be present.

6. Request to Rehear:

Z-21-30 Tri City Consumers' Action Co-Op d/b/a Infinity Peer Support Request to rehear a *Variance* from Table 18-A to permit a Community Residence-1

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

The applicant requested a continuation to the April 13, 2022 meeting to allow a full board to be present.

7. New Cases:

Z-22-07 Restoration Church Seek a *Special Exception* from Sections 22.2 and 22.3 to permit a residential facility as defined in the Zoning Ordinance.

Location: 117 Walnut Street, Rochester, Map 122 Lot 90 in the Agricultural Zone.

The applicant's attorney Christopher Swiniarski went through the criteria for a Special Exception. Mr. Swiniarski said the location is appropriate because it is right on the border of the Industrial zone which makes it a fairly diverse neighborhood. He said the use they are proposing is residential housing, there will not be any noise, dust, or smoke coming from the property. Mr. Swiniarski told the Board the current use of the property is a hair salon which has ample parking. He said they will have a total of twenty-one people living there at the end of phase two and will not have an impact on traffic, as many of the residents will not have cars.

Mr. Swiniarski said there are some very dense tree buffers between the surrounding uses. He said the development is responsive to public interest because sober living homes are needed in this area.

Mr. Winders asked what the timeframe is to be registered with the State. Mr. Swiniarski explained they can't be certified until the facility is operational because one of the criteria is inspection of the facility.

Mr. King asked what the requirements will be to get into the facility. Reverend Nathan Gagne explained the people that will be in the facility will be leaving a detox center who will have a month to ninety days of sobriety or people who have been living on their own but feel they need a home with increased accountability. Mr. King asked what the manager's job will entail. Reverend Gagne explained they will oversee the home, administer random drug testing, receive rent payments, oversee meetings that will be happening, family dinners, making sure the residents are keeping their rooms clean, making sure the residents are going to their jobs and returning for curfew.

Mr. Spector opened the public hearing.

Michael Younus of 36 Kinsale Drive spoke in favor of the facility. He said a stable living environment is a needed component in all of our lives and is essential to those in recovery.

Alexander Burgess of 62 Temple Drive said years ago he was addicted to alcohol and would have been very fortunate to be able to live in a home like this. He said one of the key things is being held accountable otherwise, left to yourself you fall back. Mr. Burgess said he strongly urges the Board to approve the application.

Ryan Ness of 24 Brenda Lane said there are ten counties in New Hampshire, Strafford County ranks number two in deaths, number two in Narcan administration, number two in emergency room visits, and number six in treatment.

Mr. Ness said he went online to try to find a recovery house in the area ahead of the meeting and could not find one.

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

Mr. Winders asked if they will add more staff once they get to phase two. Reverend Gagne explained there will be a third live-in manager that will be added to the home. He went on to say once the home is operational they may hire hourly employees to be in the home during the day because the managers have their own full time jobs.

A motion was made by Mr. King and seconded by Mr. Winders to grant the Special Exception in case Z-22-07 as presented. The motion carried unanimously by a roll call vote.

Z-22-08 Rochester Agricultural and Mechanical Association Seeks an *Appeal of Administrative Decision* to permit motor vehicle racing.

Location: 72 Lafayette Street, Rochester, Map 124 Lot 67 in the Office Commercial Zone.

The applicant's attorney Donald Whittum said the Rochester Fair is not solely a fair providing entity. He said the association has found itself over the last 150 years as having to adapt to conditions which exist at the time a fair occurs. Mr. Whittum read a list of events the Rochester Fair Association has done in the past.

Mr. Whittum sighted a case from the New Hampshire Supreme Court which says the New Hampshire Constitution guarantees the natural and inherent right of all persons to acquire, possess, and protect property. It protects all persons enjoyment of the property and provides its property shall not be taken

without just compensation. He said the court went on to say we have previously held constitutional provisions apply to non-conforming uses, hence, a past use creates a vested right for a similar future use so that a town may not unreasonably require the discontinuance of a non-conforming use.

Mr. Connor asked what type of racing they are proposing. Leon Kenisten, owner and promoter of the Enduro Series said the event is entry level stock car racing. He said they are cars that are destined for the junk yard. Mr. Kenisten said the type of racing would be small oval track racing, it would not be the entire horse track.

City attorney Terence O'Rourke said the special event permit is not the subject of this appeal as they are granted by the licensing board which is made up of the City Manager, the Fire Chief, and the Police Chief. He explained there is a big difference between a special event permit and a land use permit. Mr. O'Rourke explained the Zoning Administrator made the decision that RAMA's proposed use of the property as motor vehicle racing track is an unlawful expansion of a non-conforming use of the property which requires approval from land use boards. Mr. O'Rourke said this is the seventh time since April 6, 2021 the Zoning Administrator has said the proposals are outside the non-conforming use. Mr. O'Rourke said the use of the property is a fair ground to hold an annual fair in September. He said this property has been located in the Office Commercial district since April 2014 following comprehensive rezoning. A fair ground is not permitted use within the Office Commercial district therefore, under section 275.30.2.A of the Zoning Ordinance the property is a vested non-conforming fairground within the Office Commercial district. Mr. O'Rourke said under Section 275.30.3 of the Zoning Ordinance states "non-conforming properties may not be expanded, enlarged, extended, or intensified except as specifically provided for the ordinance but not without the appropriate approvals from the Historic District Commission, Conservation Commission, Zoning Board of Adjustments, and the Planning Board".

Mr. O'Rourke said RAMA's intended use of the property for motor vehicle racing is an expansion, extension, enlargement, and a change to a substantially different non-conforming use. He said the Board heard testimony earlier from the promoter of the event they are in fact stock car races with an oval track to go around. Mr. O'Rourke said the grandfathered non-conforming use of a fairground is different than a race track.

Mr. O'Rourke said the applicant has not attempted to seek the appropriate approvals from the necessary land use boards. He said they instead tried to seek approval from the licensing board, however that is not the same approval as an approval from a land use board.

Mr. O'Rourke said in order to prevail in this appeal RAMA must establish the Zoning Administrator either misinterpreted or misapplied the Zoning Ordinance in coming to her decision. He said both in their written application and the presentation to the Board they failed to meet that standard, and in fact has admitted to have developed a program of different uses of the property to make money and stated that is the only reason they have done the expanded uses. Mr. O'Rourke said they cannot do that without land use board approval. He said if they want to change the use of the non-conforming property they have to appropriate boards, which they have not done.

Mr. O'Rourke said the Zoning Administrator's decision is correct and by the book, no mistakes were made, no misinterpretation, and no misapplication of the Zoning Ordinance. He said the City requests the Zoning Board vote to deny the appeal.

Mr. Winders asked if the events that were held in the past never had the correct approvals. Mr. O'Rourke said they never went to get land use board approvals. He explained the fairground use predates the Rochester Zoning Ordinance which makes the fairground use grandfathered since the City adopted its first Zoning Ordinance.

Mr. Winders asked why the events that were held in the past are not part of the non-conforming use. Mr. O'Rourke explained those events have no land use board approvals and therefore no impact on

what they are currently proposing. He further explained the goal of the Zoning Ordinance is to get all properties into conformity.

Mr. King asked if the events that were approved after 2014 were a mistake because they were approved by the City Manager. Mr. O'Rourke said the City Manager approves a Special Events permit but cannot approve land use.

Mr. Whittum said when the City Manager gives his approval he's giving his approval to have the event. He said the applicant has the right given the permit from the Fire Chief and City Manager to conduct the kind of events they have.

Mr. Spector opened the public hearing.

Mike Spurling of 19 Hoover Street said he attended the meeting to stick up for the auto racing events. He said he's had a lot of people reach out to him to attend the meeting to support something that's been going on for about 30 years. Mr. Spurling said if the events can help the Fair Grounds throughout the year it's a good thing because the fair isn't doing as well as they have in years past.

Jill Johnstone of 17 Lagasse Street said the fairgrounds is her backyard. She asked what the definition of fairgrounds is and if it's determined somewhere. She asked how the proposed motor vehicle event is different from the demolition derby that is held during the fair. Ms. Johnstone said she supports what the Fair is proposing, even though it's in her back yard the events don't happen that often.

Todd Gianotti of 1 Brochu Court said he has lived in his home for 19 years with his family and has gone to various events at the fairgrounds. He said the noise has never bothered them and has never had any issues.

Jerrine Larochelle of 1 Lagasse Street said she would like to have the fairgrounds going again. She said she appreciates the hard work the Rochester Fair people do.

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

Mr. O'Rourke reiterated the difference between a Special Event permit and land use approval.

Mr. King asked if the applicant was informed how to change to ordinance. Ms. Saunders explained they would not change the ordinance, they would need to apply to the Zoning Board for an expansion of a non-conforming use. She said she has spoken to at least four applicants for various events and walked them through the process.

A motion was made by Mr. King and seconded by Mr. Winders to support the decision of the Zoning Administrator in case Z-22-08 as presented. The motion carried unanimously by a roll call vote.

8. Other Business/Non-Scheduled Items:

Mr. O'Rourke explained to the Board the City Council removed "other" from their rules of order but left the decision up to each sub-board if they want to keep or remove it.

Mr. Winders said he spoke to the City Clerk regarding this who said the Board would need a vote in order to keep it.

A motion was made by Mr. Winders and seconded by Mr. Connor to keep “other” on the agenda. The motion carried unanimously by a voice vote.

Ms. Saunders informed the Board one of the applicant’s was emailing the Board members, separately outside of the meeting. She asked those emails be forwarded to her and for the Board members not to respond to them. Ms. Saunders said this was highly unconventional and may lead to a Board Member having to recuse themselves. The whole purpose of having a public hearing is for everything to be transparent and out in the open and to make sure every Board member has the same information from the application and input from the public.

9. Adjournment:

A motion was made by Mr. Spector and seconded by Mr. Winders to adjourn at 8:15pm. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development