

# City of Rochester Zoning Board of Adjustment

Wednesday April 13, 2022

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on May 11, 2022)

## Members Present

Larry Spector, *Vice Chair*

Leo Brodeur

James Hayden

Michael King

## Members Absent

Robert Gates, excused

## Alternate Members Present

James Connor

Matthew Winders – arrived at 7:06 p.m.

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

Ashley Greene, *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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Vice Chair Larry Spector called the meeting to order at 7:00 p.m.

Shanna B. Saunders, *Director of Planning*, announced that case Z-21-30 Tri-City Consumers' Action Co-Op d/b/a Infinity Peer Support has requested to withdraw their request to rehear and will not be heard tonight. .

The recording secretary, Ashley Greene, conducted roll call.

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### **3. Seating of Alternates:**

Mr. Spector said the voting members for the meeting would be Leo Brodeur, James Hayden, Michael King, James Connor, and himself.

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

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

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## 5. Continued Cases:

**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, Map 205 Lot 42 in the Agricultural Zone.

James Covey presented the application for a Variance to allow a home occupation to assemble food trucks.

Mr. Covey stated that he no longer assembles food trucks, he is assembling the equipment that goes onto trailers and then installing it onto the trailers. Mr. Covey stated that he has a petition signed by people in the general neighborhood. Mr. Covey discussed that he is requesting a hardship in part, due to his medical issues.

Mr. Covey read through the five criteria. Mr. Covey stated that it is not contrary to the public interest because it is secluded to his driveway, there is no mess, and minimal noise with limited work hours. Mr. Covey said that the spirit of the ordinance is observed, he said that he would like to be a local business within Rochester and that he purchased the house because of the big garage to be able to keep his business going. Mr. Covey said there is substantial justice being done because if he doesn't work he will lose his house and he has no other options at this time. Mr. Covey discussed the property values and that it does not diminish his or surrounding properties. Mr. Covey discussed the unnecessary hardship of losing his house if he does not get to work.

Mr. Spector opened the public comment.

Robert Woodbury, of 7 Stacy Drive, stated that he has lived at this location for 37 years. Mr. Woodbury discussed his years living in the neighborhood and how it has deteriorated. Mr. Woodbury discussed the business going on at Mr. Covey's property. He stated that there is a lot of odor, noise, and tractor trailers in and out of the neighborhood. Mr. Woodbury stated that it diminishes quality of life and property values. Mr. Woodbury stated that to the date of this meeting Mr. Covey's activities have been shut down and it has been quiet in the neighborhood. Mr. Woodbury requested that Mr. Covey's activities remain shut down.

Tom Nierzwicki, of 8 Stacy Drive, stated that he has lived at this location for 30 years. Mr. Nierzwicki discussed the loud noises that occur in Mr. Covey's driveway from 8am-5pm. Mr. Nierzwicki stated there are one to four guys working there at any given time, and most work is done in the driveway which is 75 feet from the his front porch. Mr. Nierzwicki discussed not being able to be outside or have his windows open due to the noise and smell from the work being done. He said there are tow trucks, and back up alarms at all hours. Cassie Florence, of 8 Stacy Drive, stated she has multiple videos and pictures of work being done at 6 Stacy Drive. Ms. Florence requests that work be done in the garage and not in the driveway.

Mr. Covey stated that he is able to work in the garage since switching to trailers. Mr. Covey stated that he now has a machine to cut the sheet metal, and it should help keep the noise down to a minimum.

Mr. Spector brought it back to the board.

James Hayden asked about the dust and odors that abutters were mentioning. Mr. Covey stated that there is not that much cutting to be done, and he does not see the dust going 100 feet into the air. Mr. Covey stated that he uses metal shears to cut the sheet metal. Mr. Hayden confirmed if Mr. Covey is

only working on trailers now. Mr. Covey stated he is working on brand new trailers, so they are not an eye sore in the driveway.

Matthew Winders asked about the late-night activity that the abutters stated. Mr. Covey stated there may be a truck dropping off late at night once in a blue moon. Most drop offs are during his business hours.

Mr. Spector stated that the board can put a time limit on when Mr. Covey can work.

Michael King asked about the number of vehicles that were in the yard mentioned by abutters. Mr. Covey stated that he does not have several vehicles in the yard because he located a storage space to keep the trailers. Mr. King asked if he plans to have one in the yard and one in the garage? Mr. Covey stated that is what he plans to do going forward. Mr. King asked how many he has in his yard currently. Mr. Covey stated he has none at this time, as he brought a trailer to the storage space today.

Mr. Hayden asked if it was possible to do all the cutting and repairs inside the garage. Mr. Covey stated that he is able to do that.

Shanna Saunders discussed the Home Occupation ordinance requirements. Ms. Saunders stated there should be no visible indication of the business on the property. Ordinance hours of operation are 8am-7pm Monday-Friday and 9am-6pm on Saturdays. Ms. Saunders stated that the board can make those hours more restrictive for the applicant. Ms. Saunders discussed the types of deliveries that are allowed to come to the property based on the Home Occupation ordinance.

Mr. Winders asked if the City Attorney had an opinion on the application. Ms. Saunders discussed the City Attorney's response to this application. Ms. Saunders stated that he was not in support of the variance as it does not meet the hardship criteria. Ms. Saunders stated the City Attorney wanted to remind the board to think about property values.

Mr. King asked if the application can be approved contingent on performance. Ms. Saunders stated that it can be, but it puts strain on the city due to enforcement and City time.

*Leo Brodeur made a motion and seconded by Mr. King to deny case Z-22-05 as presented. The motion failed by a 3-2 roll call vote.*

*Mr. King made a motion and seconded by Mr. Hayden to grant case Z-22-05 with the following conditions of 9am-4pm and no storage in the yard. The motion carried by a 4-1 roll call vote.*

**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, Map 254 Lot 18 in the Agricultural Zone.

Christopher Berry presented on behalf of Sofield Apartments to develop the rear portion of their parcel. Mr. Berry discussed the history of the site. There are currently 43 multi-family units on site that were developed in the 1980s. Municipal sewer is now established on the site. In 2005, the property completed a lot line revision with the abutting Champlin Forest and received an additional 24 acres which was to be preserved and not built on. Mr. Berry stated that the Planning Board determined that the density from the 24 acres could be used for development on the front 20 acres of the site so that the rear 24 acres would not be developed. Mr. Berry discussed an open space subdivision. Mr. Berry

discussed the Runway Protection Zone (RPZ) that encumbers this site by the Sky Haven Airport. The zone is required to stay open and be free of any construction or development. Mr. Berry discussed expanding the existing nonconforming use to the level of density for the single family homes that the property is providing for. A yield plan was conducted and established that a total of 30 units could be developed that is currently encumbered by the RPZ.

Mr. Berry read through the Variance criteria.

Mr. Berry discussed the ideals and objectives that were approached for this project and how the applicant felt that all of these ideals and objectives were met, and that they are within the master plan and conservation development.

Mr. Berry stated that granting the variance would not be contrary to the public interest because it will allow the proposed allotted density to be placed in a previously developed area, leaving the southeastern corner in its natural state and free from encumbrances on the airport. The proposed townhouses will be similar to the existing apartment buildings and will add housing and additional municipal value.

Mr. Berry stated that spirit of the ordinance would be observed if the variance is granted because the ordinance allows for 94 units, but the applicant is requesting 30 units. Also allows for the spirit of the open space ordinance to be observed and unit density to be observed.

Mr. Berry stated that the granting the variance would do substantial justice because the request does not undermine the ordinance because of the placement of the project in the agricultural zone as it relates to surrounding developments. Mr. Berry discussed the conservation efforts at the rear of the property.

Mr. Berry stated that the surrounding properties value would not be diminished because it will be likely less observable from Route 108 and any other abutting property. It is tucked in behind the existing 43 units. The closest observable structure is from 800-1,000 feet away.

Mr. Berry discussed the hardship criteria for this property and the current ordinance for the Agricultural zone. Mr. Berry stated the proposed use is reasonable because it does not undermine or cause a detriment to underlying zoning or abutting owners. The project site is special because of its size, proximity to major routes and economic hubs, and its location in the Agricultural zone, all while being burdened by the RPZ Zone. The parcel is distinct from others because the RPZ Zone covers all of the highly productive part of the site, and surrounding sites that are in the RPZ Zone are only partially encumbered by the zone.

Mr. Berry stated that denial of the variance would create an unnecessary hardship for the applicant because it was previously contemplated by a land use board for future development on all 44 acres and on the other hand the property is burdened by the RPZ Zone which can't be developed.

Mr. Spector opened the public hearing.

Ms. Saunders read the following letter from the Andrew B. Pomeroy, Manager Aviation Planning and Regulatory Compliance at Pease Airport:

I write on behalf of the Pease Development Authority (PDA) in response to the NOTICE OF PUBLIC HEARING dated January 27, 2022, that the PDA received regarding the proposed development of Sofield Apartments, LLC. Skyhaven Airport (DAW), operated by the PDA, is an abutter of the project. The PDA and DAW take no position on the proposed Zoning Variance from the Agricultural Zone for the property as depicted on the attached. The proposed new development, as depicted, lies outside of the DAW Runway Protection Zone (RPZ), which is outlined with a red line on the attached. Though the proposed construction does lie under the airport's obstruction easement and aviation overlay district, it is unlikely that any of the proposed structures will penetrate the 14 CFR Part 77 Surfaces, or pose a hazard to air navigation. To ensure this is the case, the developer should file an FAA Form 7460-1, "Notice of Proposed Construction of Alteration" with the FAA for each of the proposed structures prior to construction.

The PDA would request that those parcels that do lie within the RPZ, remain zones as "Agricultural Use" as the FAA identifies Agricultural Use as an approved use for the property within a RPZ.

Mr. Spector closed the public hearing and brought it back to the board.

Mr. King asked about the affordable housing plan. Mr. Berry stated that it was merely a discussion and the word affordable may have been used incorrectly. Mr. Berry explained that the units would be market rate.

Mr. King asked about the acres that were given to the site in the past and if they would be touched at all. Mr. Berry stated no.

Ms. Saunders explained that City Attorney supports the variance application. The City Attorney supports it because of the Conservation Land that is protected by deed, the runway protection zone, and airport overlay district give the characteristics to the property that provide the hardship needed for the variance.

Mr. Winders expressed support for the variance because of the hardship of the property.

*Mr. Hayden made a motion to approve case Z-22-02 as presented. Mr. Connor seconded the motion. The motion carried by a unanimous roll call vote.*

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## 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, Map 117 Lot 55 in the Neighborhood Mixed Use Zone.

Ms. Saunders stated that the application has been withdrawn.

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

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

Mr. Spector asked if there was any discussion on wanting to rehear the application.

Mr. Winders stated that based on the information provided this time and the previous application he did not see any new information that would require a rehearing.

*Mr. Brodeur made a motion on case Z-21-30 to deny rehearing the application. Mr. Hayden seconded the motion. The motion carried by a unanimous roll-call vote.*

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## 7. New Cases:

**Z-22-09 Jason & Kristie Downer/Patriots Way LLC** Seek a *Variance* from Section 20.2.K(3) to permit the use of the building to be solely multi-family dwellings without any commercial space as a primary use.

**Location:** 28 Patriots Way, Map 138 Lot 89 in the Highway Commercial Zone.

James and Kristie Downer the application for a Variance to permit the use of the building to be solely multi-family dwellings without any commercial space as the primary use.

Mr. Downer read the Variance criteria.

Mr. Downer stated it is the last lot on the street and the only one that falls under the Highway Commercial Zone, all other properties fall under the Residential-1 Zone. Mr. Downer stated they are seeking the variance to waive the commercial use that is needed according to the zoning ordinance. This would allow them to have 8 residential units. The building is an old brick style structure that has been used as a commercial building for the last 125 years and has fallen into a gradual state of decline. Mr. Downer stated with the potential income from residential they would be able to renovate and update the building and lot. Mr. Downer explained that without the residential designation there would be multiple factors that would prevent enough financial return to warrant such an extensive renovation, such as; the buildings location at the end of a dead end street, the post-Covid loss of demand for small commercial spaces, and that the number of potential tenants would be limited. Mr. Downer stated that they are not asking to be granted a designation that is not permitted within the zone, rather asking to forgo the prerequisite of commercial space. Mr. Downer explained that the building predates all other residential homes on the street, but it would be a better fit for the neighborhood both aesthetically and functionally to repurpose it as a residential building. Mr. Downer discussed the reduced traffic if it was solely residential units, as opposed to one or more commercial businesses running in addition to residential units.

Mr. Spector opened the public hearing; none seen, brought it back to the board.

No discussion from the board.

Ms. Saunders stated that the City Attorney supported this Variance, the commercial nature of the property on a street with very little traffic met the hardship criteria.

*Mr. Brodeur made a motion on to approve case Z-22-09 as presented. Mr. Hayden seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-10 Christina Keim/Cold Moon Farm, LLC** Seeks a *Special Exception* from Section 24.4 to permit a Home Occupation 3.

**Location:** 111 Strafford Road, Tax Map 248 Lot 19 in the Agricultural Zone.

Christina Keim presented the application for a Special Exception to permit a Home Occupation 3.

Ms. Keim discussed her plans with the Home Occupation 3. Ms. Keim stated that she currently owns a horse farm and has been offering off site riding lessons through her LLC for many years. Ms. Keim explained she would like to begin offering unmounted (not riding) horsemanship instruction as well as equine assisted learning services for youth and young adults. The program will utilize existing structures, animals, and facilities with the exception of a rented port-a-potty. Ms. Keim discussed her intentions if the program is successful through the summer. Ms. Keim stated that all work will be appointment only and not open to the general public.

Ms. Keim read through the criteria.

Ms. Keim stated that this property is in an appropriate location in the agricultural zone and is an existing horse farm, with almost 9 acres on the main farm with generous buffer zones for neighbors and are set well back from the road.

Ms. Keim stated the proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because there will only be individuals or small groups visiting the farm and all activities will relate to the horses and fall within the current use of the property.

Ms. Keim stated there will not be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design access ways because all activities will occur outside of the house with the horses in the paddock, riding arena, round pen, or in the barn. There is plenty of off road parking located close to the barn, out of sight from any abutters.

Ms. Keim stated that there would be adequate and appropriate facilities and utilities will be provided and only in operation in "good weather", not winter, but May-October with small groups and individuals with a port-a-potty on site.

Mr. Spector opened the public hearing; none seen brought it back to the board.

No discussion from the board.

Ms. Saunders stated that City Attorney supported the application.

*Mr. Hayden made a motion to accept case # Z-22-10 as presented. Mr. Brodeur seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-11 T-Mobile Northeast, LLC** Seeks a *Special Exception* from Section 22.2.N to permit the expansion of a telecommunications facility and installation of a standby generator.

**Location:** 155 Rochester Hill Road, Tax Map 243 Lot 62 in the Office Commercial Zone.

Mike Azzalina presented the Special Exception application to permit the expansion of a telecommunications facility and installation of a standby generator on behalf of T-Mobile.

Mr. Azzalina stated that as part of T-Mobiles Hardening project across the country is requesting to install a standby generator in case of power outages to support it's wireless equipment.

Mr. Azzalina read through the special exception criteria.

Mr. Azzalina stated that the specific site is an appropriate location for the proposed use or structure because the existing site is used for wireless telecommunications. T-Mobile has ample space to install the proposed generator and chain link fence extension without interfering with other equipment on site.

Mr. Azzalina stated the proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the proposed generator is for standby use only and will only run for 15 minutes once or twice per month during normal business hours for maintenance.

Mr. Azzalina stated that the site location does not interfere with traffic or pedestrian activity.

Mr. Azzalina stated that the generator will be placed on a 4'x10' concrete pad and connected to an automatic transfer switch linked by electrical conduits.

Mr. Azzalina stated that the installation of the generator and chain link fence extension does not violate the Master Plan. T-Mobile believes that its proposed installation complies with all federal and state environmental requirements.

Mr. Spector opened the public hearing; none seen, brought it back to the board.

No discussion from the board.

Ms. Saunders stated that legal counsel supports the application.

*Mr. Brodeur made a motion to accept case# Z-22-11 as presented. Mr. Hayden seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-12 Monarch School of New England** Seeks a *Variance* from Sections 12.8 and 12.8.B(8) to permit a porous parking area within the 50-foot wetland buffer and to permit disturbance within 25 feet of the wetland edge.

**Location:** 105 Eastern Avenue, Tax Map 112 Lot 20 in the Residential-2 Zone.

Christopher Berry presented the Variance application on behalf of the Monarch School of New England to permit a porous parking area within the 50-foot wetland buffer and to permit disturbance within 25 feet of the wetland edge.

Mr. Berry presented the existing school, parking areas, and the wetlands features that are on site. Mr. Berry stated that the site underwent an expansion of the parking lot about 10 years ago. Mr. Berry discussed how the demands on the school has increased, the number of employees that come to the school to help the students has increased and the need for an additional parking area. Mr. Berry explained the existing conditions survey that was conducted and where the parking lot could be placed. The area and uplands around the stream have a higher quality than the internal wetlands, and the design was based around the eastern wetlands. To keep the construction congruent on site there is also a porous system being proposed. There will be no large detention and infiltration facilities would be required. Mr. Berry stated that the closest wetlands are 5.3 feet to the wetlands perimeter.

Mr. Berry read through the variance criteria.

Mr. Berry stated that granting the variance would not be contrary to public interest because the intended design allows for treatment of stormwater prior to discharge to the wetlands area.

Mr. Berry explained that if the variance was granted the spirit of the ordinance would be observed because the ordinance allows for disturbances within the buffers ordinarily by a Conditional Use Permit, but in this case the impact is for a parking area which requires a variance.

Mr. Berry explained that granting the variance would do substantial justice because it will allow productive development of the remaining piece of upland on the project site. The Monarch School has constraints that are growing over time given the population that they serve. Mr. Berry discussed the buffers and the environmental impact bring overcome by engineered methods.

Mr. Berry explained that the property values of surrounding properties would not be diminished if the variance was granted.

Mr. Berry explained that there is no fair and substantial relationship between the required buffer and the use.

Mr. Berry explained that the proposed use is a reasonable one because it does not impact the wetlands directly, only the local buffer.

Mr. Berry discussed the unnecessary hardship that would occur if the variance was not granted, that the school would outgrow its site in the near or immediate future.

Mr. Spector opened the public hearing; none seen, brought it back to the board.

Mr. Winders asked where everyone is currently parking? Mr. Berry stated they are parking in shoulders, against the building, and areas that are not designated for parking. Mr. Berry stated there are cars in every location that you may be able to fit a car. Mr. Brodeur agreed with that statement, saying he visited the site that afternoon.

*Mr. King made a motion to approve case Z-22-12 as presented. Mr. Hayden seconded the motion. The motion carried by a unanimous roll call vote.*



**Z-22-13 Positive transitions, Inc. c/o Raymond Negron** Seeks a *Variance* from Table 18-A to permit a Boarding House in the R2 zone to be used a sober house for people in recovery.

**Location:** 16 Pine Street, Tax Map 121 Lot 119 in the Residential-2 Zone.

Ms. Saunders discussed the variance that was submitted. In Chapter 275 Section 4.1 of the Zoning Ordinance allows the following: "The Board may grant a variance from the terms of this chapter without a finding of a hardship arising from conditions of a premises subject to this chapter when reasonable accommodations are necessary to allow a person with a recognized physical disability to reside in or regularly use the premises, provided that: (a) Any variance granted under this subsection shall be in harmony with the general purpose and intent of this chapter; and (b) In granting any variance pursuant to this subsection, the Zoning Board of Adjustment may provide, in a findings included in the variance, that the variance shall survive only so long as the particular person has continuing need to use the premises." Ms. Saunders stated that the board can require that the variance goes with that particular applicant and not with the address.

Chris Ratte, Attorney at Shaheen and Gordon, presenting on behalf of Positive Transitions. Mr. Ratte gave an overview of the property; 4,700 sf building built in 1881 as a boarding house and remained a boarding house until 1980s or 1990s where it was used as a residential care facility. In 2019 the building was reclassified as a single-family residence. It has 15 bedrooms, 5 Bathrooms, 3 kitchens, 2 living rooms, a dining room, and an office. The building will not be changed under the new proposed use. Mr. Ratte discussed the upgrades that have occurred, including a sprinkler system and a 24 hour surveillance system for security. Mr. Ratte explained the definition of a sober house, as it does not currently exist in the Rochester Zoning Ordinance. Mr. Ratte discussed those who are in recovery and how they are considered disabled and protected under the Americans with Disability Act. Mr. Ratte discussed the need for sober houses within the City and State of NH.

Mr. Ratte read through the variance criteria.

Mr. Ratte explained that granting the variance would not be contrary to the public interest because it will serve the public interest and provide safe housing for those in recovery, and not effect surrounding neighbors.

Mr. Ratte explained that if the variance was granted the spirit of the ordinance would be observed because a Sober House is a residential use within the residential zone, along with the original use of the building.

Mr. Ratte stated that granting the variance would do substantial justice because it would provide a desperately needed, cost effective, and useful tool for those in recovery.

Mr. Ratte explained that if the variance was granted it would not diminish the values of the surrounding properties because there are rules in place to protect the neighborhood.

Mr. Ratte explained that the board can grant a variance without finding a hardship when reasonable accommodations are necessary to allow persons with a recognized disability to reside in the premises. Mr. Ratte discussed the Americans with Disability Act and how it relates to this application.

Mr. Spector opened the public hearing.

Raymond Negron, property owner and applicant, discussed the variance and the importance of granting the variance. Mr. Negron discussed the substance abuse within the community and what his business, Positive Transitions, will be able to do for the community and the individuals seeking recovery. Mr. Negron stated that Positive Transitions is the gap between a 30 day program and

independent sober living. Mr. Negron discussed the rules, regulations, and requirements for those living in his sober home.

Kim Bock, Executive Director of NH Coalition of Recovery Residences (CORR), discussed her role with Mr. Negron and his Sober House, Positive Transitions. Ms. Bock stated that Positive Transitions is not yet certified and will not be certified until they have been running for 3 months. Ms. Bock stated that Mr. Negron has taken all the right steps to meet the standards of NH CORR.

Susan Major, resident of 18 Pine Street, discussed the Sober House in her neighborhood. Ms. Major stated that at first idea of the house she was fearful, but it is better than an abandoned building. Ms. Major explained that since Mr. Negron purchased the property there has been communication and her fears have been eased and she is in favor of the application.

Priscilla Lemelin, of 14 Pine Street, discussed the proposed project and her support for the Sober House. Ms. Lemelin discussed that it has been quiet since Mr. Negron purchased the property and that she feels safe, and the communication has been transparent.

Marty Simon, of 15 Pine Street, has lived in the neighborhood for 12 years. Mr. Simon stated that when he first moved in it was a boarding house and it was not a good situation. Mr. Simon discussed when the property was abandoned it was just as bad as a boarding house. Mr. Simon explained that Mr. Negron has been a great neighbor and have had zero problems with the Sober House being in the neighborhood.

Stephanie Tellis, of 15 Pine Street, has lived in the neighborhood for 19 years. Ms. Tellis explained that since Mr. Negron purchased the property the neighborhood has been a better place and safer. Ms. Tellis discussed her support for the Sober House.

Charles Novack, a Master Licensed Alcohol and Drug Counselor, based out of Manchester. Mr. Novack stated that he has had clients that lived at the address previously and can attest to what abutters have stated. Mr. Novack discussed the importance of being a good neighbor while in recovery and that Mr. Negron has done a great job being a good neighbor. Mr. Novack discussed the reduced crime rate with Sober Living. Mr. Novack discussed the importance of having the Sober Living Home as a form of transition from a 30 day program.

Mr. Brodeur asked how long a resident will stay at the Sober Home. Mr. Negron explained that it is based on the client and as long as they are following the rules and progressing, but no less than 3 months and typically no more than 2 years. Mr. Brodeur asked if they have to find a job? Mr. Negron stated that it is mandatory to have a job in order to pay the fees. Mr. Negron explained that they want people to progress and that Positive Transitions is the stepping stone to live independently.

Mr. Winders asked what other staff will be on site besides the live-in peers? Mr. Negron explained that for every 4 or 5 guys there would be a leader for them. One main leader and 4 or 5 other leaders. After there are 21 people living there he would be able to hire a part time case manager.

Mr. Spector asked about the parking and if all 21 individuals had a car. Mr. Negron explained that most people who are coming from a 30 day program do not have vehicles. Mr. Spector asked how they get to work? Mr. Negron explained that 16 Pine Street is right off Main Street and there are many options within the area to get a job. Bus tickets are available at SOS Recovery to be able to get to work.

Mr. King asked about the variance being granted without the hardship and how it follows the individual and not the property. Mr. King expressed his concern that it does not seem to fit this application. Ms.

Saunders explained that it goes with the applicant, Raymond Negrón, and if he leaves then the variance is null and void. Mr. King asked about the ADA and clarification. Ms. Saunders explained that it makes them physically disabled and the City recognizes that and legal counsel has looked at that and supports the application as presented.

*Mr. King made a motion to approve case #Z-22-13 in addition to what is laid out in 275.4.1 B4 with the condition that the variance will sunset when the applicant, Raymond Negrón of Positive Transitions, vacates the premise. Mr. Brodeur seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-14 East Rochester Baseball Athletic Assoc.** Seeks a *Special Exception* from Section 23.2.10(b) to permit a fence greater than six feet in height.

**Location:** 44 Spring Street, Tax Map 103 Lot 191 in the Agricultural Zone.

Kevin Gosselin, President of East Rochester Baseball Athletic Association, presented the application. Mr. Gosselin explained the Association is looking to install a 60 foot fence that will be installed by White Mountain Cable Company. The netting would be placed inside the existing fence line to keep foul balls from projecting into the road and onto neighboring properties.

Mr. Gosselin read through the criteria.

Mr. Gosselin explained that the specific site is an appropriate location for the proposed use because the netting will be installed to protect people, cars, homes, etc. from stray balls.

Mr. Gosselin explained that the proposal would not be detrimental, injurious, obnoxious, or offensive to the neighborhood because it will protect the surrounding areas from flying objects that leave the ball field.

Mr. Gosselin explained that there will be no undue nuisance or serious hazard because the netting from the poles will keep foul balls in the premise.

Mr. Gosselin explained that White Mountain Cable Company will be installing the poles to ensure proper operation of the proposed use.

Mr. Spector opened the public hearing.

Chris Stilson, Rochester resident and Vice President of East Rochester Baseball Athletic Association, discussed the history of the baseball field and the desire to bring the neighborhood back together.

Steve Leonard, of 17 Crowhill Road, discussed his concerns about the baseball field and the amount of baseballs that have been hit into his yard. Mr. Leonard explained that there has been men's baseball leagues and claims that the Association has not done anything regarding safety for the neighborhood. Mr. Leonard discussed the net that is being proposed and that he feels it won't stop a baseball. Mr. Leonard explained that the net will be in view of his property and diminish his property value. Mr. Leonard discussed the lack of communication with insurance when damage has occurred due to baseballs.

Sean McMahon, of 24 Crowhill Road, discussed his concerns for property value if the net goes up along the road and property lines.

Beverly Wild-Simmons, of 20 Crowhill Road, stated that she is directly next to the baseball field and it has cost her thousands of dollars in court fees. Ms. Wild-Simmons discussed the 20-foot net that was installed along her property line without permits. Ms. Wild-Simmons discussed the need for a

professional to assess a fence to determine if it is designed properly. Ms. Wild-Simmons discussed baseballs hitting homes and roads.

Michael Simmons, of 20 Crowhill Road, discussed the safety issue and the reason why he and his wife took them to court. Mr. Simmons discussed the outcome of the court hearing and how the court system has to determine if what the baseball association is proposing will be safe for the surrounding abutters.

Ms. Saunders read an abutter email from Matt Earl, 47 Spring Street:

"I am a property owner to Keay Field. I thoroughly object to the requested Special Exception fencing. Ultimately a decision like this will need to be approved in some form however it is impossible to know what is appropriate until ERBA waits for the courts decision on what is required to be safe. Approving a fence that will not solve the problem seems a waste of the Cities & ERBA's time & resources. Please see me rebuttals below on why this exception does not meet the Purpose of Rochester Zoning as well as my concerns about ERBA's application as their answers seem to be false.

Additionally ERBA installed a new greater than 6 feet high last year & none of the abutters were notified. This Spite fence they installed does nothing as damage & negatively affects the sightlines & views in the neighborhood.

Was the fence they installed last year approved by Special Exception?

Zoning Purpose 275-1.3

- C. To preserve and enhance the value of land and buildings;
  - If this Exception is approved ERBA will continue to damage homes because of their ongoing lawsuit. Additionally the unsightly, inefficient old "driving range nets from hilltop" will not Preserve the beauty of the neighborhood. Both of these will effectively lower the value of the land and buildings
- E. To revitalize the downtown and other village and neighborhood commercial areas;
- F. To foster economic development and provide opportunities for business growth;
- G. To enhance the walkability, diversity, interest, beauty, and vibrancy of the City's neighborhoods;
- H. To conserve natural, historic, and cultural resources;
- To preserve the City's rural character and scenic beauty and promote agriculture;
- J. To foster the creation of parks, recreation facilities, and open spaces;
- L. To promote excellence in architecture, landscaping, site layout, signage, and civic design;
  - To Meet all of the goals listed as the Purpose of Zoning above Rochester NH should DENY this special exception. Everyone wants ERBA to thrive, to continue to be a cornerstone of East Rochester & provide a healthy outlet for the everyone. I am sure you all can agree that it is in ERBA, mine, My Neighbors & all of the pedestrians & cars that drive down Spring Street best interest to wait until the court decides what is required & what is safe.
- N. To recognize and respect the rights of property and business owners;
  - YOU MUST DENY the exception to recognize and respect my rights. ERBA has been Court Ordered to come to an agreement with the neighbors & wait for the decision. Rochester will be directly aiding ERBA to go against this order if the fence is approved.
- O. To promote public health and secure safety from fire, flood, and other hazards;
  - Yes – we want to be safe from the Hazards of the field. Please, Please wait for the court decision on what is safe and deny this request.
- S. To enhance the sense of community; and
  - They have been ordered to come to an agreement with the neighbors. I am sure you can agree that an agreement fosters the community while making decisions arbitrarily that will negatively affect your neighbors will not.
- T. To make Rochester a more attractive, vibrant, and healthy community for its residents, businesses, property owners, and visitors.
  - YES YES YES. This is why you must deny the special exception. ERBA MUST WAIT FOR THE COURT ORDER on what is safe.

275.22 Special Exception Sheet  
(B)

(1) – The specific site IS NOT the appropriate location for the fence. East Rochester Baseball has been ordered by the NH Courts to come to an agreement with the Neighbors about safety precautions like netting/fencing and East Rochester Baseball has failed to do so. The appropriateness of the site will not be known until it is decided in court, therefore Mr. Gosselin's answer is false & incorrect and this is not an appropriate location to stop the danger.

(2) – This fence IS OBNOXIOUS & INJURIOUS. The field has been found in court to present "Irreparable Harm" to the home & people in their yards as well as pedestrians and vehicles in the public roadway. The proposed netting will not sufficiently stop the baseballs from exiting the field, going high enough to cross the street and land on the Roof of my 2 Story Home. Furthermore because ERBA has not waited for the Courts decision on how to safely protect everyone if this Special Exception is approved the fence is guaranteed to have not been reviewed by an Engineer and deemed safe in the Court yet.

(3) – There is currently & will continue to be Nuisance, Serious Hazard to pedestrians, vehicles & Homes if this fence is approved and installed because it has not been deemed safe in court yet."

Mr. Gosselin stated that they are not reusing any netting from a golf course, the Association purchased the poles from Hilltop Fun Center, the netting that Hilltop had was not in good condition. Mr. Gosselin discussed the location of each pole along the baseball field. Mr. Gosselin explained that the Association has insurance and each baseball team that plays at the field carries insurance. Mr. Gosselin stated that they have not received any claims for damage so they were unable to provide their insurance to abutters.

Mr. Brodeur asked for clarification where the poles are going to be. Mr. Gosselin explained that it will be inside the field and the existing fence line, in line with the back stop and the dug out on both sides. Mr. Brodeur asked the distance between each pole. Mr. Gosselin stated they will be 50 and 60 feet apart. Mr. Brodeur confirmed that it would be 100 feet of netting on each side. Mr. Brodeur expressed his concern about the netting not being enough to cover the surrounding properties.

Mr. Winders asked if there was a professional that looked at the property. Mr. Gosselin stated that White Mountain Cable Company has looked at the property and his brother, who is an engineer, has looked at the property as well.

Mr. King asked if the neighbors and the Association have another court date? Mr. Gosselin stated that it is in June. Mr. King asked if the Association is going to work with the neighbors to come up with a plan regarding safety.

The Board discussed the court and how that ties into the Special Exception application. Ms. Saunders explained that the Board's decision needs to be based on the criteria and not the outcome of the court.

Mr. Spector asked if Ms. Saunders can address the 20 foot fence. Ms. Saunders stated that the 20 foot fence is the reason the Association is here. The City received complaints when it went up and the City addressed it and notified the association that they need to do a Special Exception for the fence. When the Association came in they amended the request to do a 60 foot fence rather than just the 20.

*Mr. Brodeur made a motion to deny case# Z-22-14 on the basis of too much negative effect on the neighborhood and not meeting the special exception criteria. Mr. King seconded the motion. The motion carried by a 3-2 roll call vote.*

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## 8. Other Business/Non-Scheduled Items:

Mr. Winders discussed an email that was sent out about training for board members and encouraged everyone to attend.

Mr. Winders requested something be put into the notice of decision regarding a request to rehear to be identified as a non-public hearing. Ms. Saunders explained the state statute and the RSA that addresses a non-public hearing and asked that Mr. Winders and herself discuss this at a different time.

Ms. Saunders stated that Ryan O'Connor was promoted to Senior Planner. Ms. Saunders explained that the Planning Department is looking for a Planner I that will be working directly with the Conservation Commission.

Mr. Spector stated the Mr. Gates will likely not be coming back to the Zoning Board due to some health issues and there will have to be another election in the future. Mr. Winders asked if he was resigned from the board or just as chair. Ms. Saunders stated that he is resigned from the board and the Planning Department is awaiting a written letter of resignation.

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## 9. Adjournment:

*A motion was made by Mr. Brodeur and seconded by Mr. Hayden to adjourn at 9:18 p.m. The motion carried unanimously.*

Respectfully Submitted,

Ashley Greene,  
Administrative Assistant II

and

Shanna B. Saunders,  
Director of Planning & Development