

City of Rochester Zoning Board of Adjustment

Wednesday May 11, 2022

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on June 8, 2022)

Members Present

Larry Spector, *Vice Chair*

Leo Brodeur

James Hayden

Michael King

Members Absent

Alternate Members Present

James Connor

Lance Powers

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 7:00 p.m.

The recording secretary, Crystal Galloway, conducted roll call.

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.

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Hayden to approve the minutes from the April 13, 2022 meeting. The motion carried unanimously.

5. New Cases:

Z-22-15 GNM Solar 17, LLC Seeks an *Appeal of Administrative Decision* preventing the issuance of a building permit to install fifty (50) solar pedestals on the property with a blueberry farm, as this use is considered a “Utility – Power Generation” which is not a permitted use in the Agricultural Zone

Location: 60 Shaw Drive, Map 240 Lot 49 in the Agricultural Zone.

FX Bruton of Bruton and Berube, PLLC presented the appeal of an administrative decision. He explained the parcel abuts industrial uses and the airport, but it is located in the agricultural zone. Mr. Bruton said the intended use for the property is a blueberry farm which would be an agricultural use, and the other is to install solar panels to add a solar farm. He explained the applicant has gone through the process before for the same use in a different town where he was only required to get a building permit.

Mr. Bruton explained this time the applicant was told his proposal would be considered a power generation utility which is not allowed in the zone. Mr. Bruton said RSA 362-A relates to a process called net metering which is the use of renewable energy for customers of existing utilities. When the customer has a solar panel the energy that is produced is metered in a net fashion off of what the customer is using from the utility.

Mr. Bruton went on to explain materials is a form of substance, not radiation from the sun or wind from the air and that is why they are not included on the list in the definition of power generation utility.

Mr. Bruton said the applicant is proposing a farming operation with a blueberry farm with solar power assisting with the production of the blueberries.

Mr. Spector opened the public hearing. No one from the public was present to speak; Mr. Spector brought the discussion back to the Board.

Mr. Brodeur asked how the blueberry farm will utilize solar. Mr. Bruton said energy is needed to do farming and it absorbs the energy and will reduce the use of water needed for the blueberries to grow. Mr. Brodeur said a blueberry farm requires sunshine. He asked if the solar panel would block the sun. Mr. Bruton explained the panels will move and they are designed to capture every strand of radiation. Mr. Brodeur asked for further clarification. Applicant Packy Campbell said solar panels use about 20 percent of the sun’s spectrum. He said there will be enough sun left that is needed to grow the blueberries.

Mr. Hayden asked if fifty pedestals were chosen to get to the one-megawatt number or was it chosen for the size of the farm. Mr. Campbell explained there are 2,400 panels on fifty trackers which will produce one-megawatt of AC inverters.

Mr. Winders asked if the majority of the power will be used for the farm or will it go back to the grid. Mr. Campbell said the majority will be used in the group net metering program and will be used by members of the group.

Ms. Saunders said the City supports solar energy, saying permits are issued regularly for accessory solar panels on roofs and accessory trackers for residential and business. She explained there were two factors that lead to the decision in this case, one being sunlight would fall into the “other material” category of the definition, and two the fact that the majority of energy is being used for commercial purposes for profit, and it would not be an accessory use.

Mr. King asked if the City Attorney provided an opinion regarding the appeal. Ms. Saunders told the Board the City Attorney supports her administrative decision.

A motion was made by Mr. Brodeur and seconded by Mr. King to deny case Z-22-15 based on the discussion with City Staff. The motion carried unanimously by a roll call vote.

Z-22-16 GNM Solar 17, LLC Seeks a *Variance* from Table 18-D to permit the power generation utility in the agricultural zone.

Location: 60 Shaw Drive, Map 240 Lot 49 in the Agricultural Zone.

FX Bruton of Bruton and Berube, PLLC presented the variance application. He said the property is unique because it is located on a class VI road, it's wooded, it abuts residential properties as well as industrial and commercial uses. Mr. Bruton said the other unique characteristics of the property is there are high voltage wires going through the property creating an an easement, as well.

Mr. Bruton read through the five criteria. He said public interest is served by permitting the orderly development of property in a locus specifically zoned for agriculture. The spirit of the ordinance is observed because the project represents a reasonable use of the property when balanced with the location, zone, and historic use of the property. Substantial justice is done by granting the variance because it allows the applicant's property to be reasonably utilized in light of abutting property uses and its locus in the agricultural district. The surrounding properties have an associated value that is premised upon the existence of structures and features similar to those proposed on his property, and the proposed improvements likely increase comparable neighboring property values. The agricultural zone was created to promote expansion of agricultural activity. The solar panels serve the dual purpose of sustainably powering the property's farm operation while providing a microclimate designed to increase crop production and decrease water consumption.

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

Ms. Saunders told the Board the opinion of the City Attorney was the applicant did not meet the hardship criteria and there are other reasonable uses on a class VI road in the agricultural zone this lot could be used for.

A motion was made by Mr. Brodeur and seconded by Mr. King to deny case Z-22-16 because the applicant did not meet the hardship criteria. The motion carried unanimously by a roll call vote.

6. Other Business/Non-Scheduled Items:

Mr. Spector let the Board know Mr. Gates will not be returning. He said his term expired in January of this year so he will not have to submit a formal resignation. Mr. Spector said the Board will need to vote for a new Chair and Vice Chair.

Mr. Spector nominated Mr. Brodeur for Vice Chair; Mr. Hayden seconded. The nomination carried unanimously by a roll call vote.

Mr. Brodeur nominated Mr. Spector for Chair; Mr. Hayden seconded. The nomination carried unanimously by a roll call vote.

There was a brief discussion regarding the by-laws for the Zoning Board. The Board asked to have a review and update of the by-laws at the meeting in June.

7. Adjournment:

A motion was made by Mr. Hayden and seconded by Mr. Brodeur to adjourn at 7:52 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development