

City of Rochester Zoning Board of Adjustment

Wednesday September 14, 2022

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on November 9, 2022)

Members Present

Leo Brodeur, *Vice Chair*

Michael King

Members Absent

James Connor, excused

James Hayden, excused

Larry Spector, excused

Alternate Members Present

Lance Powers

Matthew Winders

Laura Zimmerman

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 Leo Brodeur called the meeting to order at 7:00 p.m.

The recording secretary, Crystal Galloway, conducted roll call.

3. Seating of Alternates:

Mr. Brodeur said the voting members for the meeting would be Michael King, Lance Powers, Matthew Winders, Laura Zimmerman, and himself

4. Approval of Minutes:

A motion was made by Mr. Winders and seconded by Mr. King to approve the minutes from the August 10, 2022 meeting. The motion carried unanimously.

5. Rehearing:

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

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

Attorney FX Bruton of Bruton and Berube presented the application for a variance. He passed out a preliminary site plan for the purpose of going to the Planning Board if they are granted the variance. Mr. Bruton said it shows a depiction of what they are proposing to do with the solar panels along with a 50 foot by 50 foot blueberry patch under each panel which is intended to be used with the farming aspect. Mr. Bruton explained the residential property next to the site has a commercial aspect, the parcel behind the site is the Albany manufacturing facility.

Mr. Bruton said the property is unique because it is located on a class six road which would make the lot difficult to use for a commercial use. He said there is an active railroad along the side of the lot along with significant wetlands which are identified on the plan that was handed out. Mr. Bruton said the lot is close to the airport who the applicant has been working with and gained approval to locate the solar farm on the parcel. He said in addition there are high voltage power lines going through the property, and in addition the property has an easement to allow it. He said there is a high voltage three phase tie-in located adjacent to the lot which are different than high voltage tension lines. Mr. Bruton said the parcel was looked at specifically for the tie-in lines which makes it unique.

Mr. Bruton went through the five criteria. He said it was important for the Board to know fifty percent of the power generated will go to the Rochester school system.

Mr. Bruton said 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. Allowing the solar panels that work increase farm production, an agricultural use, encourages the most appropriate use of land in the agricultural district.

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. This proposal does not burden the public in any way, and substantially benefits the applicant by allowing his to reasonably use his property with no detrimental effect to surrounding property.

The project will not affect neighboring property value because it is consistent with other uses in the near vicinity and promoted in the existing district.

There is no fair and substantial relationship between the general public purpose of the ordinance's provision prohibiting solar panels on the property, and the specific application of this provision to the property because the use specifically promotes agriculture, and the property abuts the industrial district where surplus power may be easily off-loaded.

The proposed use is a reasonable one because 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. Bruton said these symbiotic uses preserve existing farms, promote expansion of agricultural activity, and are reasonable given the property's proximity to the industrial district where surplus power is off-loaded.

Mr. King asked if the school district will be charged for the electricity or if the applicant is giving it to them. Mr. Bruton said the school will be charged but it will be a decreased amount.

Ms. Zimmerman asked if they have a study showing there will not be an impact on the wetlands or environment. Mr. Bruton said the plan shows they will be staying away from the wetlands. The applicant Packy Campbell explained the property was delineated by a Wetland Scientist; the surveyors took that information in order to create the existing conditions plan. He added any other use would have some type of impact on the wetlands.

Mr. Winders asked if the high voltage tie-in is unique to the property. Mr. Campbell said it is very unique to the property because Albany is there, and they have two 1,000 KVA transformers which is the end of what is called the spur which goes out to the Portland Street substation. He said they will be able to tie in without having to upgrade the whole grid.

Mr. Brodeur asked what the height and width of the solar panel is. Mr. Campbell explained the whole thing is approximately 1,100 square feet, the post sits on a pedestal and holds the tracker solar panel which is 32 feet in height at it's tallest angle.

Mr. Brodeur asked what the dollar value is that the City of Rochester would be saving. Mr. Campbell said the City would save approximately \$34,751.64.

Mr. Brodeur asked if the solar panels would improve the crop of blueberries. Mr. Campbell said it would and went on to explain the process.

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

Mr. Brodeur asked for the City's position. Ms. Saunders said a variance is granted when the property can't be used reasonably in the manner that meets the ordinance because of special conditions of the property. She said at the time she reviewed the application she did not think that was the instance, but the Board can make the decision that there are not unique conditions of the property. She said the fact that the power infrastructure is there is definitely a unique characteristic of the property could be sighted if the Board wants to approve the application.

Ms. Saunders said the Board has to decide whether or not the property has enough unique characteristics to not be developed in the way the ordinance asks it to be, which is single family or agricultural use.

Ms. Saunders said this is going to be a 50,000 square foot facility which fits under the power generation definition which is an industrial use on this agricultural parcel.

Mr. Brodeur closed the public hearing.

Mr. Powers questioned the spirit of the ordinance. He questioned the surrounding property value regardless of what the applicant stated, saying there is a property next to this parcel that is undeveloped that he believes the value would be diminished. Mr. Powers said the applicant must establish the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. He said the property next door is the same shape, size, and characteristics.

A motion was made by Mr. Winders and seconded by Mr. King to approve case Z-22-16 as presented because they met all five criteria and proved the hardship due to the unique characteristics of the property with the electrical connection, the proximity of the airport, the transmission lines, and the railroad. The motion carried 3 to 2 by a roll call vote. Mr. Powers and Mr. Brodeur opposed.

Z-22-23 86 Church Street, LLC Seeks a *Variance* from Section 30.3.A to permit an expansion of a previously approved non-conforming use to allow additional multi-family dwellings in the Agricultural District.

Location: 84 and 86 Church Street, Map 258 Lots 7 & 8 in the Agricultural Zone.

Attorney Steven Hyde said there was no discussion of the five criteria at the original meeting in June. Mr. Hyde explained the property is located in the agricultural zone which was improved by multi-family dwelling units based on prior approvals before the zoning change. He said the request is to expand the use but it would require a variance from Section 30.3 to allow the expansion of a nonconforming use.

Mr. Hyde read through the criteria. He said the variance will not be contrary to the public interest because it will allow the proposed allotted density to be placed in a previously developed area, while leaving the single-family residence currently located on the sister lot in place, the proposed townhouses will be in keeping with the existing townhouse structures on the property and will conform to the existing land use. The spirit of the ordinance is observed because the combined lot will have more than the minimum frontage required by the ordinance and the addition of the units requested is permitted by the ordinance that allows for the addition of 33.7 additional units to the combined parcel based on the minimum lot area per dwelling unit requirements, whereas only 30 additional units are proposed.

Mr. Hyde said substantial justice is done and achieved by allowing the productive development of a site already containing the use to be expanded, by expanding that permitted nonconforming use in an area that has congruent development on nearby properties. The values of the surrounding properties will not be diminished because the development will occur upon a lot where the same use is existing and in an area where other neighboring lots are developed in a manner of similar or significantly higher density while

leaving a significant portion of the parcel in its natural state aside from the anticipated addition of one or more nature trails to permit the residents of the project to enjoy the natural elements of the area. Mr. Hyde said the subject parcel is special in a number of ways, including the general size, shape and depth of the parcel, its ability to be merged with an abutting lot under common ownership and its general developable nature in proximity to major routes of travel and businesses, as well as its location in the agricultural zone, its existing nonconforming nature, the existing water and sewer infrastructure sized for a development of an increased but as yet undeveloped density, and its prior approval for increased density development that was not acted upon by a prior owner, all distinguish the subject parcel from all others in the area.

Mr. Brodeur opened the public hearing.

Daniel Connelly of 82 Church Street said the apartments were built at 86 Church Street in 1979 but the abutters were never notified until the units were half built. He said he has been living in his home since 1978 and hasn't had an issue with the existing apartments. Mr. Connelly said his issue is with the proposal for 84 Church Street because the apartments will be in his backyard and will affect his property. He asked the Board to take that into consideration.

Mr. Hyde explained the tree cover that buffers Mr. Connelly's property from 84 Church Street. Mr. Hyde said he appreciates Mr. Connelly's concern however, the City put the density ring which included the subject lots.

Applicant Greg Mahanna said back in 1979 when the project was approved the parcel wasn't zoned agricultural and it was approved for 18 units by the Planning Board.

Mr. Brodeur asked for the City's position. Ms. Saunders said the City agrees with the applicant, the density ring which encompasses this lot makes it unique. She said in addition, it has existing multifamily use which had been approved and exists in the area. Ms. Saunders said for those reasons the City feels there is a hardship.

Mr. Winders asked if they are proposing to build a buffer. Mr. Hyde said to the north property line there is a lot of vegetation. He said on the other side of the property where the golf course is located, they intend to add more screening to reduce the chance of car windows being broke from golf balls.

Mr. Brodeur closed the public hearing.

Mr. Powers said he agrees with everything the applicant said about the parcel with the existing apartments but has an issue with 84 Church Street because it is a separate lot and does not meet the criteria. Ms. Saunders said the applicant's intension is to combine the two parcels. Mr. Powers said they are currently two separate lots and that is what the Board has to look at.

A motion was made Mr. Powers and seconded Mr. Winders to approve the variance for the parcel located at 86 Church Street in case Z-22-23 because all the criteria has been met. The motion carried unanimously by a roll call vote.

A motion was made by Mr. Powers and seconded by Mr. Winders to deny the variance for the parcel located at 84 Church Street in case Z-22-23 because the hardship criteria has not been met. The motion carried unanimously by a roll call vote.

6. Continued Cases:

Z-22-26 Ian and Katherine Fogg Seeks a *Variance* from Table 19-A to permit construction of a deck within the side setback.

Location: 15 Constitution Way, Map 256 Lot 61-20 in the Agricultural Zone.

Applicant Ian Fogg presented the request for a variance. He explained originally the house was suppose to face a different direction so what would have been the side setback became the rear of the house. Mr. Fogg said they would like to build a deck on the back of the house that would be within six feet of the property line.

Mr. Fogg read through the criteria. He said granting the variance would not be contrary to the public interest because it would add living space to the exterior of the property as well as adding value to the home. The spirit of the ordinance would be observed because there is an existing rock feature separating the abutting property. Granting the variance would do justice because the current owners would be able to better utilize the exterior of the home with a secondary egress and deck. Adding a secondary egress and outdoor living space would add value to the home and surrounding properties. There is an existing rock feature that separates the outdoor living space from the abutting property, creating natural separation. This would allow the existing homeowners the ability to add a secondary first floor egress and outdoor living space that utilizes property not currently used. Mr. Fogg said the addition of the deck can only be done in that location due to the existing bulkhead on the road facing side of the home.

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

Mr. Brodeur asked for the City's position. Ms. Saunders said the decision is up to the Board, the hardship needs to be looked at, if there are any unique characteristics of the property. She said it is a very large house on a very small lot.

Mr. Brodeur said the parcel has a hardship. He said as far as the other criteria, the surrounding property values will not be affected, the spirit of the ordinance appears to be observed, and it's not contrary to public interest.

Mr. Winders said he agreed, especially because of the size house that is on the lot and the fact that there is two frontages.

A motion was made by Mr. Winders and seconded by Mr. King to approve case Z-22-26 as presented because all five criteria have been met. The motion carried 4 to 1 by a roll call vote. Mr. Powers opposed.

7. New Cases:

Z-22-28 Macproperties Leonard Street, LLC Seeks a *Variance* from Table 19-A to permit a third unit with less than the required lot size.

Location: 24-26 Leonard Street, Map 120 Lot 25 in the Residential-2 Zone.

Attorney John P. McGee stated the applicant purchased the property that was advertised as and appeared to be a tri-plex. He said after purchasing the property the Building Inspector informed him the building was only approved for a two-unit building not three.

Mr. McGee explained the previous owner converted the building into a three-unit back in the 1980's without approval. He said the former owner went before the Zoning Board in 2006 for a variance and was denied. Mr. McGee read through the criteria. He said to allow the third residential unit will not alter the essential character of the locality, nor would it threaten the public health, safety, or welfare. There will not be any significant increase in traffic, storm water run-off, or any other factor such as smoke, noise, odor, dust, etc. Allowing a third unit will not diminish the value of surrounding properties. Mr. McGee explained given the existence of the physical third unit, there is a hardship because in order to convert the building back to a duplex it would cost over \$33,000 to update the inside to eliminate the third unit.

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

Mr. Brodeur asked for the City's position. Ms. Saunders said because there was a variance request that was previously denied the Board must make the determination that there is new information that has been submitted such that the application is substantially different from the previous application in 2007. Ms. Saunders said the lot is much larger than others in neighborhood which would meet the hardship criteria because the only other larger lot in the area also houses a three-unit building.

Mr. Brodeur asked how many tenants are living on site. Mr. McGee said the applicant is living there and he has one tenant.

Mr. Winders asked if the Board could get a copy of the original application to ensure there is different information. Ms. Saunders explained she didn't have a copy of the original application, however there wasn't much information on it.

A motion was made by Mr. Winders to continue case Z-22-28 to the October meeting in order to determine if there is substantially different information. No one seconded; the motion failed.

A motion was made by Mr. Powers and seconded by Mr. King to approve case Z-22-28 as presented based on the submitted criteria. The motion carried by a 3 to 2 roll call vote. Mr. Winders and Mr. Brodeur opposed.

Z-22-29 Jacob Moody Seeks a *Variance* from Table 18-A to permit a three-unit multifamily building in the R1 zone.

Location: 101 Winter Street, Map 120 Lot 147 in the Residential-1 Zone.

Applicant Jacob Moody explained he is seeking to convert a duplex he purchased a year ago into a three-unit multifamily building. He said the building is pretty run down, he is looking to fix up the building and live in one unit while renting out the other two.

Mr. Moody read through the criteria. He said granting the variance would not be contrary to the public interest because there would be an increase in property value after the remodel as well as the building would no longer be an eye sore. The spirit of the ordinance would be observed because the building will still be a residential building and will not be changing the footprint of the existing building. Substantial justice would be done because it will allow the owners to live on the property to keep up with maintenance and ensure tenants are respectful and responsible. The values of the surrounding properties would not be diminished because the building is not changing in footprint and will be improving the structure. Denial of the variance would result in unnecessary hardship because the building across the street is a four-unit apartment building on a smaller lot. Mr. Moody said it will not change the footprint of the structure and there is enough parking for more than six vehicles. He said it would be a hardship as the property across the street on a smaller parcel of land has four units in the building and allowing the variance will allow him to maintain and manage the property better.

Mr. Brodeur opened the public hearing. Ms. Saunders read the following emails staff received:

My name is Carey Jones and I live at 16 First Street in Rochester which is behind 101 Winter Street. I am writing to you about the variance that has been submitted for the Winter Street property. My 2 main concerns are privacy and fire damage.

The building for the proposed rental unit variance is extremely close to my property. I am afraid that if there ever was a fire my house would be involved very quickly. Also the fire department would have to gain access through my property which would damage my fencing.

The building is just a few feet from my property line so privacy is also an issue.

Thank you for your time.

Carey Jones

16 First Street

Rochester, NH 03867

This letter serves to address our concerns pertaining to recent proposals submitted for the property at 101 Winter Street. The owner is requesting a variance to add an additional apartment to the existing 2- unit multifamily building. The backyard of our property at 12 First St, on the northeast side, abuts the Winter Street property in question. Our main concern with the proposal is that of privacy. The parking area and garage of the apartment building runs adjacent to our backyard so resident vehicle usage would affect both noise and aesthetics for us. This could be addressed by the property owner installing a vinyl privacy fence along the lot line.

In addition, the condition and safety of the driveway, which is the only access to parking for the apartment building, is a concern. The driveway was built over a culvert in Willow Brook. It's in poor condition and possibly not structurally sound. The stress of additional vehicles without reinforcing the driveway could lead to its collapse and therefore damage city runoff pipes that merge at that point with Willow Brook. In 2005, a previous property owner requested a variance for a similar conversion from two apartments to three. Work was started on a garage apartment before the request was denied but the owner was allowed to keep the improvements he'd already made to the space.... I believe work on a bathroom and kitchen was started at that time.

If the current Zoning Board approves the completion of the 3rd apartment, we would request a stipulation of owner occupancy be added to the R1 Winter Street property designation indefinitely. That would help insure the property upkeep and the leasing to responsible tenants for now and in the future. However, we are not in favor of continued expansion and renovation into the unfinished area of the garage as we feel the property size, location and condition doesn't support this usage and would impact us negatively. We believe the garage and driveway access, in their current state, would need major renovations to increase surrounding property values.

In conclusion, we request that if the variance is allowed, at a minimum, the installation of vinyl fencing at the property line and addition of an owner-occupancy stipulation be addressed before proceeding. Thank you for your attention to and consideration of this matter.

Monserate & Christine Diaz
12 1st Street
Rochester, NH 03867

Mr. Brodeur asked for the City's position. Ms. Saunders said it is tough to see unique characteristics about the lot but noted the lot is slightly larger than some of the other on the same side of the street because many of them have Willow Brook for the lot line.

There was a brief discussion regarding the lot size requirements.

Mr. Brodeur closed the public hearing.

Ms. Saunders told the Board that a variance request was denied in 2005 to allow a third unit because the lot wasn't large enough. She said the Board could look at the submitted second application as new information.

There was some discussion regarding the driveway and whether or not it could support additional vehicles.

The Board members deliberated the unnecessary hardship. Ms. Zimmerman said she believes because of the size of the building it meets the hardship.

A motion was made by Mr. Powers and seconded by Ms. Zimmerman to approve case Z-22-29 as presented because they met all the criteria. The motion carried unanimously by a roll call vote.

Z-22-30 Jacob Moody Seeks a *Variance* from Table 19-A to permit a three-unit multifamily building with less than the required lot size.

Location: 101 Winter Street, Map 120 Lot 147 in the Residential-1 Zone.

Mr. Moody submitted the same criteria as the above variance. He further explained they spoke to the City about the bridge on the driveway because it is in rough condition, they are working with an engineer to have plans drawn up.

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

Mr. Brodeur asked for the City's position. Ms. Saunders said the position of the City is the same as in the case above.

A motion was made by Mr. Winders and seconded by Mr. Powers to approve case Z-22-30 as presented because they met the criteria with the condition a stockade fence is to be added along the right lot line. The motion carried unanimously by a roll call vote.

8. Other Business/Non-Scheduled Items:

Ms. Saunders told the Board the Planning Department has hired a new Planner I, Renee McIsaac who will be the new staff liaison to the Conservation Commission as well as working with the E911 Committee, and other small projects in the office.

9. Adjournment:

A motion was made by Mr. Powers and seconded by Mr. Winders to adjourn at 9:32 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development