

# City of Rochester Zoning Board of Adjustment

Wednesday March 8, 2023

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on April 12, 2023)*

## Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

Michael King

## Members Absent

Matthew Winders, excused

## Alternate Members Present

Brylye Collins

James Connor

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](http://www.rochesternh.net) for a limited time for reference purposes.

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

The recording secretary, Crystal Galloway, conducted roll call.

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

Mr. Spector said the voting members for the meeting would be Mr. King, Mr. Powers, Ms. Zimmerman, Mr. Connor and himself.

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

*A motion was made by Mr. King and seconded by Mr. Powers to approve the minutes from the February 8, 2023 meeting. The motion carried unanimously by a voice vote.*

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### **5. Motion for Rehearing:**

**Z-23-02 Packy's Investment Properties, LLC** Seeks a *Motion to Rehear* an Appeal of Administrative Decision that the addition of thirteen (13) more trackers to a mini-storage (self-storage) site that already contains eleven (11) trackers is an addition of use of a Utility – Power Generation and not simply an expansion of an accessory solar use.

**Location :** 17 Sterling Drive, Map 208 Lot 18 in the Granite Ridge Development Zone.

Mr. King said the letter that was submitted was quite substantial, but he wasn't sure if it contained any new information. Mr. Spector said the letter still states the applicant wants the additional trackers would which make it power generation.

Ms. Saunders explained that the City's position is that if the applicant is creating more power than the primary use is consuming it meets the definition of Power Generation Utility. She read the definition for the Board. She said the Board should look at whether or not the applicant submitted new information such that it would change the outcome of the Board original decision or does the Board feel like it erred in its decision and therefore the case should be reheard.

Mr. King said he feels the power generation has become the primary use on the property not the storage facility. Mr. Spector and others agreed.

*A motion was made by Mr. Spector and seconded by Mr. Powers to deny the Motion for Rehearing in case Z-23-02 because no new information was submitted, and the Board did not feel they erred in their original decision. The motion carried unanimously by a roll call vote.*

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## **6. Continued Cases:**

**Z-22-34 New Hampshire Signs** Seeks a *Variance* from Section 29.14.B(1) to permit a free-standing sign height of 50 feet where only 30 feet is allowed, and to allow a sign of 196 square feet where only 75 square feet is allowed.

**Location:** 298 North Main Street, Map 115 Lot 31 in the Highway Commercial Zone.

Fred Pineault of New Hampshire Signs explained they felt it was not reasonable to present a 32 square foot message center on the sign. He said with highway speeds and sight distances the only possible use for a message center that size is as a time and temperature unit which does not achieve the goals laid out in their last request. Mr. Pineault said they are now requesting an internally illuminated sign of 50 feet high and 196 square feet in the shape of the Hammond oval.

Mr. Pineault read through the variance criteria. He said public interest would be served by maintain the viability of the site; attracting people that drive on the highway and directing them to the site. The proposed use will observe the spirit of the ordinance because it allow highway traffic to identify Hammond Lumber and it's offerings and mitigates some of the disadvantages caused by the change in the exit. Substantial justice would be done to the property owner because the site suffers from several disadvantages because of the road changes. The proposed use will not diminish the values of surrounding properties because there are several other signs in the area of the same scale and height as the sign we are requesting. Lowes is 44 square feet, The Ridge is approximately 200 square feet, Lilac Mall's larger sign is 180 square feet, Washington Place has about 200 square feet with a 60 square foot digital sign.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the disadvantages forced on this site are not of its making. The changes to the exit have created a unique situation where Hammond's clientele must access its facility, essentially adjacent to a competitor.

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

Ms. Saunders clarified what the Board has previously approved for the site. She said the sign at Ten Rod and No. Main was approved for 94.36 square feet internally illuminated and 60 sq ft (with variance) EMC. For a total of 153.36 square feet.

She went on to say a variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance because of special conditions of the property and that these special conditions make it different from any other property in the area. OR when the prohibited use does not serve the public purpose of the Zoning Ordinance. The fact that this property is bounded by roads on all sides including an exit ramp does make it somewhat different from other properties in the area.

Mr. Spector closed the public hearing.

The Board discussed the new proposal in relation to the criteria.

*A motion was made by Mr. King and seconded by Mr. Powers to approve case Z-22-34 as presented because the other signs in the area are consistent with the size of the proposed sign and it will not diminish the value of the surrounding properties, substantial justice is being done, it's within the spirit of the ordinance, and because of the unique characteristics of the property. The motion carried unanimously by a roll call vote.*

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## 7. New Cases:

**Z-23-04 Aranorian Oil Company, Inc. and Aranco Realty, Inc.** Seeks a *Variance* from Section 30.3 to permit the expansion of a non-conforming use (a gas station) and seeks a *Variance* from Table 19-A lot coverage where 35% is allowed and they are proposing 70.7%

**Location:** 160 & 162 Charles Street, Map 128 Lots 214 & 215 in the Residential-2 and Neighborhood Mixed Use Zones.

FX Bruton of Bruton and Berube, PLLC told the Board the applicant has gone to the surrounding neighborhood to explain proposed project and has received signatures in support which they submitted to the Board at the hearing. Mr. Bruton explained the applicant owns two parcels that will be merged upon site plan approval for the expansion of the existing non-conforming gas station located at 162 Charles Street. This is in the neighborhood mixed use zone where 90 percent lot coverage is allowed. There is currently a single-family residence located at 160 Charles Street which is in the residential-2 zone which allows 35 percent lot coverage. He explained the coverage they will have on the back lot is approximately 63 percent where 35 percent is allowed. The total coverage once the lots are merged will be 70 percent. Mr. Bruton said the property is located at the intersection of Charles Street and Columbus Avenue and is oddly configured in the shape of a triangle. He explained the improvements contemplated by the applicant will significantly improve the aesthetic appearance of the site, will dramatically improve the safety of pedestrian and driving customers, and will improve buffering for adjacent residential uses.

Mr. Bruton read through the five criteria.

He said the variances will not be contrary to the public interest because it will create reasonable use of the properties and upgrades to the facilities will create increased safety increased aesthetics. The character of the neighborhood will not change because they have been operating a gas station at this location for the past 40 years. The spirit of the ordinance will be observed because upgrading the gas station to the twenty first century standards will reduce the queuing of cars will increase safety. Substantial justice will be done because the site will be modernized with upgraded landscaping, and environmental protection. Property values will be enhanced because they will be upgrading an old gas station to a modern standard which will serve the city and increase the value of the surrounding properties. The triangular shape of the property is very unique and creates a crowding effect.

Mr. Bruton said they will create better traffic flow, increased safety for both vehicles and pedestrians, better aesthetic presentation. He said it would be a hardship for the site if both uses were to be kept the same.

Mr. Bruton explained they have submitted 230 signatures in support of the expansion as well as a list of the abutters who have given their approval for the project. He said there is one abutter who expressed concerns about light. Mr. Bruton explained they are taking that concern into consideration. He said the applicant is willing to install a fence or additional landscaping such as adding juniper bushes which are seven feet in height.

Mr. Spector opened the public hearing.

Chris Bannon of 155 Charles Street said he has looked at the plans and appreciates the due diligence the applicant has put into the project. He said good zoning trumps the applicants concerns in this case. Mr. Bannon said the Zoning Board is commissioned the defenders of the community through the application of a well ordered and well-conceived plan for corporate growth. He said through zoning we thoughtfully and proactively balance the rights of individual property owners and business owners for the common good and well being of the community. Mr. Bannon said in this case, neither the city nor the neighborhood stand to benefit in any way if the variance is granted. Mr. Bannon explained there are 80 gas pumps within 1.5 miles of the Charles Street location, including 18 that are currently inactive. He said the applicants claim that expansion would create a needed, welcoming gateway to the city is meritless because that need has been met with the addition of the new Circle K off of exit 12, the Shell station off of exit 13, Cumberland Farms which greets customers from exit 14 and 15. Mr. Bannon said the claim that the expansion of a non-conforming commercial use into the residential neighborhood, including the removal of an established single family residence will not adversely affect property values is baseless and self-serving. He said homes that provide boundaries to nonresidential uses are particularly more important.

Mr. Bannon explained the view from his kitchen window is a single-family home. If the variance is granted he will see the side of a convenience store. He said the variance proves a material difference to the character of the neighborhood and every abutting property on this end of Charles Street stands to lose tens of thousands of dollars in market value if there is further encroachment of commercial use is permitted. As a professional Real Estate Agent he said he has the grounds to make such a claim. Mr. Bannon said the plan as submitted would not only encroach into a historic residential zone but also transform what it currently a minimally intrusive neighborhood scale appropriate service station into what would be based on the number of gas pumps, the single largest station in the city.

Mr. Bannon said we are in the middle of an unprecedented housing supply crisis. Housing affordability is at an all time low, home prices are the primary driver of inflation which drives interest, which makes everything in our lives less affordable. He said we live in a desirable area where there are not enough homes available and prospective buyers are quitting the search every day. Mr. Bannon said there are currently 5 single family homes for sale in the entire City of Rochester. He said the Zoning Board is beholden to consider what is in the best interest of the city, what serves the surrounding neighborhood, are we protecting the invaluable corporate asset which is the character of our established residential areas against creeping commercial sprawl. Mr. Bannon said this requested variance has been conceived to serve them and them alone and is detrimental to the character of the neighborhood, detrimental to local property values, detrimental to the regional economy, and serves to meet no need and offers no benefit to the City of Rochester and as such should be soundly rejected.

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

Mr. Bruton said the applicant is looking for safety for everyone on the site. He said the site is old and needs to be brought up to the twenty-first century. He said they are not looking to make this the end of the residential community, saying the abutter who would be most impacted by the expansion has signed the letter of support.

Mr. Connor asked if they will be taking down the existing building and moving some of the gas pumps. Mr. Bruton explained the new convenience store will be placed approximately where the existing house is located and the pumps will end where the furthest pump is currently located. Mr. Connor asked how many pumps they are proposing. Mr. Bruton said there will be eight pumps.

Mr. Spector closed the public hearing.

Ms. Saunders explained the Board is looking at two variances, expansion of a non-conforming use as well as lot coverage.

Ms. Zimmerman said she was struggling with the first criteria which states it must not alter the appearance of the neighborhood. She said to some degree it will and she thought Mr. Bannon made a good point in saying they will be taking down a good home which will change the neighborhood.

Ms. Zimmerman asked if the surrounding property values would be affected. Ms. Saunders explained the Board needs to make a determination based on the testimony given what they think the right answer would be. Mr. Connor said looking at the signed support letter submitted by the applicant more abutters agree to the development than those that do not.

Ms. Zimmerman said she is concerned because the Board has not heard from any of the abutters that signed the letter. She said she would like to know if they are making an informed decision as they may not be thinking of the larger picture.

Ms. Saunders explained the Board could continue the application and ask a Realtor to give the Board an opinion based on a third party review.

Ms. Collins said she is concerned with the increase in traffic flow and what impact it may have on stop lights and increased traffic in the area. Mr. Spector reminded the Board even though this is something the Planning Board would look at they can also take into consideration.

Mr. Spector asked for the City's position. Ms. Saunders explained A variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance because of special conditions of the property and that these special conditions make it different from any other property in the area. Or when the prohibited use does not serve the public purpose of the Zoning Ordinance.

For the Variance for the expansion of the Non-Conforming Use: When these two lots are merged, this will create a unique situation where the lot is now bisected by the zoning district. However, this is a hardship of their own making. It is hard to see special conditions of the property that require the expansion of the gas station footprint. Financial gain cannot be a hardship.

For the Variance for Lot Coverage for the Convenience Store: the unique character of the residential-2 lot is that a convenience store is allowed in the residential-2 on a lot that is only allowed 35 percent coverage, however this lot directly abuts an neighborhood mixed use lot where the coverage allowed is 95 percent. The average of 95 percent coverage and 35 percent coverage is 65 percent. Perhaps we can ask them to try and reach 65 percent coverage on the residential-2 lot? In addition, per section 275-27.6 of the Zoning Ordinance, had the two lots been merged prior to the zoning ordinance update, they would have the right to extend the neighborhood mixed use through the residential-2 lot (100 feet when the residential-2 lot is only 97 feet wide). Because the lots are separate lots at this time they cannot do this.

Ms. Saunders said she asks that the Board require a lot merger as a condition of approval so it is one lot moving forward.

*A motion was made by Mr. Powers and seconded by Ms. Zimmerman to continue case Z-23-04 to the April 12, 2023 meeting to allow third party real estate and traffic analysis to be completed. The motion carried unanimously by a roll call vote.*

Mr. Spector called a recess at 8:00pm

Mr. Spector called the meeting back to order at 8:03pm

**Z-23-05 Stafford Learning Center** Seeks a *Variance* from Table 18-B to permit a school in the Industrial zone.

**Location:** 35 Industrial Way, Map 230 Lot 21 in the Industrial Zone.

Josh Lanzetta of Bruton and Berube explained the parcel is located in the industrial zone which allows for both commercial and industrial uses. He said the building they are looking at is very unique because it was designed like a Soviet era bunker, made with very thick steel making it very hard to change the floor plan or renovate.

Property owner David Francoeur explained a portion of the building is already set up for a school as Granite State College use to be in that building. He said they will be putting in a second private entrance to school for the kids as well as upgrading two additional private bathrooms for the kids to use. Mr. Francoeur said the YMCA is located at the far left of the building and the remaining space in the building is office space.

Helen Rist of Strafford Learning Center explained they offer services for students with different special education needs. She told the Board they will be running the Rochester Learning Academy which will be for Rochester School District as well as a couple other programs. Ms. Rist said they are currently operating out of the old mill building in Gonic but they have some concerns about the existing conditions of the building. She said this location is much more convenient as it is located right off the highway.

Mr. Lanzetta addressed the criteria. He said this project fits the spirit and intent of the ordinance, it is not contrary to the public interest and the City has already granted a variance to allow a college located in this building. He said it is a use that directly helps the community and its children. Mr. Lanzetta said the size and design of the building creates a hardship by presenting this use, especially when there is already an extensive buildout on the property.

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. Spector asked for the City's position. Ms. Saunders said A variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance because of special conditions of the property and that these special conditions make it different from any other property in the area. Or when the prohibited use does not serve the public purpose of the Zoning Ordinance. This property contains a 30,000 square foot office structure built in 1994 that has been underutilized for decades. The typical industrial uses do not fit this structure's form. This may be considered a special condition that meets the hardship criteria. In addition, the YMCA was given a Special Exception in 2019 for a childcare center in this same building which is also a special condition that may affect an industrial use moving in.

Mr. Spector closed the public hearing.

Ms. Zimmerman said Granite State College was located there, they're just trading one school for another. The Board discussed the other criteria.

*A motion was made by Ms. Zimmerman and seconded by Mr. Powers to approve case Z-23 05 as presented because all the criteria has been met. The motion carried unanimously by a roll call vote.*

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

Mr. Spector reminded the Board they can ask the applicant for things as part of their review or as conditions of approval even if other Boards will be reviewing the project at a later date.

Ms. Saunders let the Board know the Planning Department has a new secretary, Jaclyn Millard.

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## **9. Adjournment:**

*A motion was made by Mr. Powers and seconded by Mr. Connor to adjourn at 8:31 p.m. The motion carried unanimously.*

Respectfully Submitted,

Crystal Galloway,  
Planner I

and

Shanna B. Saunders,  
Director of Planning & Development