

# City of Rochester Zoning Board of Adjustment

Wednesday September 13, 2023

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on October 11, 2023)*

## Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

## Members Absent

Michael King, *excused*

Matthew Winders, *excused*

Laura Zimmerman, *excused*

## Alternate Members Present

Brylye Collins

Stephen Foster

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. Powers, Mr. Connor, Ms. Collins, Mr. Foster, and himself.

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

*A motion was made by Mr. Powers and seconded by Mr. Connor to approve the minutes from the August 9, 2023 meeting. The motion carried unanimously by a voice vote.*

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### **5. Continued Cases:**

**Z-23-22 MPG Corporation** Seeks a *Variance* from Section 20.2.F(3) to permit fuel pumps and equipment to be 10 feet from the side lot line where 30 feet is required.

**Location:** 4 Little Falls Bridge Road, Map 216 Lot 12 in the Granite Ridge Development Zone.

Ms. Saunders let the Board know the applicant has requested a continuance to the October 11, 2023 meeting.

**Z-23-23 MPG Corporation** Seeks a *Variance* from Section 20.2.F(5) to permit a fueling canopy to be 6 feet from the side lot line where 20 feet is required.

**Location:** 4 Little Falls Bridge Road, Map 216 Lot 12 in the Granite Ridge Development Zone.

Ms. Saunders let the Board know the applicant has requested a continuance to the October 11, 2023 meeting.

*A motion was made Mr. Powers to continue case Z-23-22 and Z-23-23 to the October 11, 2023 meeting as requested. Mr. Connor seconded. The motion carried unanimously by a voice vote.*

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## **6. New Cases:**

**Z-23-43 Cecil Abels** Seeks a *Special Exception* from Section 23.3.E(4) to permit live outdoor music and entertainment.

**Location:** 184 South Main Street, Map 125 Lot 55 in the Neighborhood Mixed Use Zone.

Applicant Cecil Abels presented the application for a special exception. He explained they currently have a sixty-one-seat outdoor dining space and they would like add live entertainment.

Mr. Abels read the criteria. He said the site is an appropriate location for the proposed use because it is an existing restaurant with an outdoor dining area. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the location is in a high traffic area surrounded on two sides by commercial properties and a city graveyard abutting the property to the northeast side. The stage is positioned facing away from the only residential abutter and towards the graveyard. There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic because there will be no change to the existing traffic patterns. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because permitting outdoor music will bring residents into the South Main Street area of downtown and bring culture and family fun entertainment to our growing city.

Mr. Spector opened the public hearing.

Ms. Saunders read the following email from Patrick Marcotte of Granite State Glass:

I represent Granite State Glass at 186 South Main Street. It has come to our attention the neighboring property has had a change of use and may have referenced using our parking lot for parking. We wanted to make sure it was clear that our parking is not for their use, and we do not grant permission for them to use our parking lot.

There was no on further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Ms. Saunders explained this is an after the fact permit and normally it would be proper for the Zoning Board to require some sound mitigation. She said in this case, the music has been occurring for a couple of months

with no complaints from the abutters. Ms. Saunders said she feels the applicant meets the criteria regarding the use not being detrimental to the neighborhood.

The Board deliberated the criteria.

*A motion was made by Mr. Powers to approve case Z-23-43 as presented citing all the criteria has been met with the condition they are not to use the parking lot of the neighboring business. Mr. Connor seconded. The motion carried unanimously by a roll call vote.*

**Z-23-44 Wayne Bilodeau** Seeks a *Special Exception* from Section 23.3.A(10)(b) to permit an 8-foot-tall fence where a 6-foot-tall fence is allowed.

**Location:** 174 Salmon Falls Road, Map 211 Lot 22 in the Agricultural Zone.

Applicant Wayne Bilodeau presented the application for a special exception. He explained he wants to install a pool next year and would like to put up a fence to add privacy between his property and his neighbor's backyard.

Mr. Bilodeau read the criteria. He said the location for the proposed structure is appropriate because it would provide privacy between the two backyards. The proposed structure is not detrimental, injurious, obnoxious, or offensive to the neighborhood because it is a vinyl fence that will run through the backyard between the houses, and it will be tan, so it will blend in. There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because the fence will only run 96-feet between two backyards and will not be seen from the roadway. The proposed structure is consistent with the spirit of the ordinance and the intent of the master plan because the plan is to create privacy between backyards so at a future date they can put in a 4-foot above ground pool.

Mr. Spector opened the public hearing. There was no one present from the public to speak; Mr. Spector closed the public hearing.

The Board deliberated the criteria.

*A motion was made Mr. Connor to approve case Z-23-44 as presented citing all criteria has been met. Mr. Powers seconded. The motion carried unanimously by a roll call vote.*

**Z-23-45 Real Estate Advisors, Inc.** Seeks a *Variance* from Section 33.7 to permit four (4) buildings containing eight (8) residential units each on one lot in a conservation subdivision.

**Location:** Evelyn Drive, Map 223 Lot 21-52 in the Agricultural Zone.

Hunter Adams of the Cheney Company presented the variance application. He explained the project was approved in 2018 and they have been working on developing it or selling it since.

Mr. Adams read the criteria. He said granting the variance would not be contrary to the public interest because the variance is not allowing more units than what is allowed per the plan's density allowance. The variance would simply allow the building of residential spaces on two floors, instead of a single floor. Otherwise, the amount of open space would diminish. Further, the properties subject to the variance are not visible from Portland and Franklin Street, and are instead, at the back of the subdivision, facing the largest portion of open space. Permitting the use of greater than 4-unit buildings would not alter the essential character of the neighborhood, or threaten public health, safety, or otherwise injure public rights since similar housing already exists in the neighborhood, specifically, the Bridle Wood Preserve Condominiums on Portland Street which are configured in multiple, two-story eight unit buildings therefore the character of the conservation subdivision will

be unchanged since multifamily buildings are already in the area and conservation subdivision regulations already allow for multifamily uses. The only difference is there will be eight units in one building instead of four. The spirit of the ordinance would be observed because the conservation subdivision allows for multifamily, three or more residential units, therefore eight units on the same footprint meets the spirit of the ordinance. Also, one of the objectives as stated in the town or Rochester's conservation subdivision is to provide a mix of housing types. One of the goals in building a multi-generational neighborhood is to provide housing for 55 and over. A two-story building with an elevator would provide more economical housing for 55 and over and often offer security features that can't be as easily found in a single family home. Substantial justice would be done because it would allow more diversified housing, including 55 and over housing at a more affordable cost to the buyer and all with more open space therefore meeting the needs of the conservation zone and providing a better quality of living for residents. It will also provide more taxable income to the town with less demands of school services. The values of the surrounding properties would not be diminished because the investment developers must make to create a subdivision, the value of the properties surrounding the development increase as a result. In addition, the project improves the condition of the intersection between Franklin Street and Portland Street which benefits the value of the surrounding properties by increasing safety for residents who utilize said intersection and the overall appearance of the space. Denial of the variance would result in an unnecessary hardship because as part of the approval of Stuart Acres, the developer is required to redo the Franklin Street intersection along with building 1400 feet of new road within the project without any lots fronting thereon, in order to help maintain open space adjacent to the existing neighborhood. To provide needed 55 and over housing to the town, the allowed density must be accomplished. The configuration that would allow for the density of 90 units without altering the existing road plan, is to allow the developer to build four eight-unit versus 16 four-unit buildings. This allows the project to maintain the same open space as efficiency is gained building on two floors instead of one. There is essentially no impact to the general public given that the entirety of the project is the same number of density, it's just the configuration that is different in order to maximize the open space and make the project feasible. Further, the properties subject to the variance are not visible from Portland and Franklin Street, and are instead at the back of the subdivision facing the largest portion of open space.

Mr. Spector opened the public hearing.

James Benton of 579 Portland Street read a letter he submitted to the Board into the record.

I am an abutter to this project and have the following questions and concerns regarding the latest application for this subdivision.

As an abutter to this project, I find the following issues with the application.

The provided sketch does not appear to be a scale drawing and includes other information that is not specifically written in the application. Such as the note at the top left in yellow indicating a change in the number of units within the entire development. The number of units in the currently approved development are 36 single family homes, 14 duplexes and two (2) fourplexes for a total of 72 units. The note on the provided sketch indicates 45 single family homes, two (2) duplexes, three (3) triplexes, and four (4) eightplexes for a total of 90 units, an increase of 25% over the currently approved conservation subdivision. This application is specific to the four (4) eightplexes. Any other changes are not specifically listed on the application.

One of the requirements for a variance is that the variance is required because the property has special conditions which distinguish it from other properties in the area and the property faces an unreasonable hardship if the variance is not granted. Their hardship argument is that the development requires revisions to the Franklin Street intersection. In my view, there is no hardship because the existing approved subdivision already provides for revising the Franklin Street intersection. Having four (4) 8-unit buildings instead of a larger number of 4-unit buildings really has no impact on the intersection and the developer proposed the intersection changes included in the approved project.

One of the other variance criteria is that the variance is not contrary to the public interest and that there will not be an adverse impact on the neighborhood. They point out that Bridlewood Preserve already has 2 story multi-unit buildings. However, the direct abutters to Stuart Acres are all single family, and the other lots within Stuart Acres will be primarily single family. Further, the sketch that they submitted shows a large parking area for the four (4) 8-unit buildings which is entirely out of keeping with the small driveways and garages for all the other lots.

When the developer applied for the subdivision they asked for as many units as they thought they could get approved, and this is a major increase in the number of units. The new multifamily units will be much different in appearance to the rest of the subdivision in terms of overall mass, height, and the large parking area that is unlike any other parking arrangements within the subdivision. There really is no hardship involving the intersection because they have already agreed to make those changes, and the intersection has nothing to do with building oversize units that conflict with the neighborhood and the rest of this project itself.

The currently approved project went through multiple revisions and variance approvals. The property has terrain variations that require specific grading and drainage easements throughout as well as wetlands. Any additional buildings or pavement will cause problems with the currently designed drainage. The proposed area for these buildings is on a wetland boundary.

There are no specifics provided to show what current lots will be consumed by the proposed eightplexes, any new triplexes, or changes to duplexes and single-family home lots.

The application with information provided lacks detail and formality for any abutter to evaluate and properly comment. Written information conflicts with the sketch provided.

I appreciate your review of these questions and concerns. I ask that consideration be made to all abutters and the application, as submitted, be denied.

Paul Martin of 35 Brenda Lane said he opposes the increase in the number of units from 74 to 90. He said adding more units to a development that does not have a sidewalk doesn't make sense. Mr. Martin told the Board the developer begged the Planning Board to not require sidewalks because raised sidewalks were expensive to build and they are a trip hazard for seniors. He said after the raised sidewalk issue was settled the developer never mentioned the development would be for 55 or older again.

Al Benton of 585 Portland Street asked if the variance gets approved if the developer will get a new start date for when the Franklin Street intersection has to be done. He said asked the Board not to support the variance request because the intersection will not be able to handle that much extra traffic.

Lou Catano of 37 Brenda Lane urged the Board to vote no on the variance request. He said developer is proposing a 25% increase in units which is being added to help the developer offset the cost of the Franklin Street intersection. Mr. Catano said after seeing the renditions of the proposed buildings he believes the surrounding property values will be diminished.

Jay Chasteasay of 600 Portland Street said he is concerned about the increase in traffic and property values.

Ms. Saunders read the following email received from Lindsay Sullivan of 24 Jeremiah Lane:

We are aware of the development being put in. We saw that this will be a 55 plus community. We would like to have a 10-12-foot-high PVC material privacy fence built by the town or the developer which would be on our property line. At this juncture in the process, we feel that this would be the best solution for us to keep our privacy. We were also aware of the development when we purchased the property, however we were told it would be a 12-unit housing community in a cul-de-sac. Not tall structures.

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

Ms. Saunders explained the property was originally approved for 53 lots with 72 units, a mix of single family homes and duplex lots in March 2018, it was then amended in December 2019 to include 54 lots and 74 units, a mix of single family homes and duplex lots. The applicant is now proposing to change some of the lots to multifamily. Multi Family is not allowed in the Agricultural Zone and so a Variance is required. Page 14 of the digital packet shows the proposed plan with blue and orange squares D= duplex and the circled 8 is the multifamily buildings.

Ms. Saunders reminded the Board to remember the hardship criteria needs to meet by exemplifying the unique characteristics of the lot such that it cannot be developed with what the law allows. In this case what is allowed is single family, duplex, and triplex lots. Cost cannot be a factor. Cost of the intersection cannot be a factor. Staff does not see any other characteristics of the land that exemplify a hardship in the application.

In addition, Ms. Saunders clarified the development mentioned that is an existing multifamily is Bridlewood, however this is in a different Zoning District, the R2 zone.

The Board deliberated the criteria. Mr. Connor said he believes the hardship criteria hasn't been met. Mr. Spector agreed. Mr. Powers said whether or not the project is financially viable is not part of the hardship requirements. He went on to say he questioned the second criteria regarding the spirit of the ordinance because of the proposed large buildings.

*A motion was made by Mr. Powers to deny case Z-23-45 citing the hardship criteria has not been met. Ms. Collins seconded. The motion carried unanimously by a roll call vote.*

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

Ms. Saunders explained the Board had approved a special exception for a home occupation business use and the person has now outgrown what he was approved for. Several enforcement actions have been taken. She went on to explain the next step for Staff to take for enforcement would be to administratively revoke the approval. Ms. Saunders said the applicant has the right to appeal the decision which the Board would review. Ms. Saunders explained the other option would be is to take the applicant to court which would be more formal and wouldn't give the applicant time to find a more suitable property.

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## **8. Adjournment:**

*A motion was made by Mr. Powers and seconded by Mr. Connor to adjourn at 8:01 p.m. The motion carried unanimously.*

Respectfully Submitted,

Crystal Galloway,  
Planner I

and

Shanna B. Saunders,  
Director of Planning & Development