



## City of Rochester, New Hampshire

Building, Zoning & Licensing Dept.

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### MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF JULY 8, 2015 (Approved August 12, 2015)

The Chair called the meeting to order at 7:00 p.m. in the Council Chambers.

#### Roll Call:

Roll call was taken with the following members present

#### Members Present

Ralph Torr, Chair  
Lawrence Spector, Vice Chair  
Robert Gates  
Randy Lavallee  
Robert Goldstein  
Fidae Azouri, Alternate  
Leo Brodeur, Alternate

#### Members Excused

Also present: Jim Grant, Director of Building, Zoning & Licensing  
Karen L. Grenier, Building, Zoning & Licensing Secretary

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These minutes are 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 in the Building, Zoning and Licensing Department for a limited time for reference purposes. It may be copied for a fee.

#### Approval of Minutes:

The minutes of June 10, 2015 were reviewed, Mr. Gates made a motion to accept the minutes as written, Mr. Lavallee seconded the motion. The motion passed unanimously by roll call vote.

The Chair asked if members had any conflict with tonight's case. There were no conflicts. The Chair stated the five regular members would be voting on the cases this evening.

#### New Cases:

**2015-11** Application by Omer Croteau for a Variance to allow conversion of a single family building to a four unit apartment building with less square footage of minimum lot area than what is required. This request is according to the City's Zoning Ordinance, Article 42 Section 19 Dimensional Regulations, Table 19 B.

**Location:** 9 Central Ave. Map 120 Lot 373, Downtown Commercial Zone.

Attorney Schulte approached the podium in representation for Mr. Omer Croteau and addressed the Board about the parking for the variance. Attorney Schulte also stated the previous owner converted the building with no permits. The application was for four units, Mr. Croteau will be willing to accept approval for three units. Currently, Mr. Croteau is looking at long term parking allowance commitment with the abutting church to use that parking lot at night. If the agreement goes through then Mr. Croteau would consider a fourth unit and come back to the city for a variance. Mr. Schulte expressed the renovations on the outside to bring the building up from a slum building to top notch building for the neighborhood. The building would be hard wired sprinkled which actually is safer than the condition it has been in. The City actually gave abatement for the bad condition of the house. The Attorney also stated Mr. Croteau will be making renovations so the home fits into the character of the neighborhood. Mr. Goldstein discussed the fact the building frontage was not met. The Attorney and Mr. Goldstein discussed the lot criteria. Mr. Torr stated the five criteria do not need to be restated as this was a continuance and nothing has changed. The Chair asked if anyone wanted to speak for or against this variance. No one came forward. The Chair asked if the city had any comments. Mr. Grant stated the property has been viewed as an existing duplex. The parking decision is by Building, Zoning and Licensing Officer or Planning Board.

The City Manager had no comment.

The Chair closed the public hearing portion of this case and the board members worked on the criteria sheets.

Mr. Gates made a motion to grant this variance for three units as presented for the following reasons: The variance will not be contrary to the public interest because: It will not increase congestion in the streets. The spirit of the ordinance is observed because: It will not negatively impact health and the general welfare. If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of surrounding properties will not be diminished because: It will not generate levels of noise, light, activity or traffic that are significantly different from that which currently exists.

Mr. Lavallee seconded the motion. The motion passed unanimously by roll call vote.

Mr. Grant advised that anyone aggrieved by this decision has 30 days to appeal.

**2015-17** Application by OCW Retail - Rochester, c/o The Wilder Companies, on behalf of IHOP for a Variance to allow accent up lighting for the IHOP building in the Highway Commercial Zone. This request is according to the City's Zoning Ordinance, Article 42, Section 28(d)(1)(a).

**Location:** 160 Washington St. Map 130 Lot 38, Highway Commercial Zone

Ms. Kelli Burke, Vice President of Developmental Services for the Wilder Companies, representing OCW Retail Rochester LLC. At 160 Washington Street, approached the podium and addressed the Board about the IHOP up lighting at 160 Washington St.

Ms. Burke announced Paige Quigley Property Manager for the Rochester Crossings, and announced Mr. Lee Mailer, National Restaurants Designers about the lighting specifications and questions. Chair Torr stopped Kelli and stated the lighting was missed when the project got proposed to Planning and signs were installed without the lights The IHOP building elevations are above grade to begin with and the lighting will not affect the surrounding area

any more than the current buildings. Chair Torr had Ms. Burke read through the five criteria. Ms. Burke stated the use is not contrary to the spirit of the ordinance. She also stated there would be no negative impacts from the lighting. Mr. Torr asked if the Board members had any questions. Mr. Goldstein had a question about dark lighting he addressed to Ms. Burke. Ms. Burke stated the lights slightly exceed the four foot candle limit but dissipate quickly.

There were no other questions from the other Board Members.

The Chair asked if anyone wanted to speak for or against this variance. No one came forward. Jim Grant stated there were no comments from the City or the City Manager.

The Chair closed the public hearing portion of this case and the members worked on their criteria sheets.

Mr. Gates made a motion to grant this variance, as presented, for the following reasons: The variance will not be contrary to the public interest because: It will not increase congestion in the streets. The spirit of the ordinance is observed because: It will not negatively impact health and the general welfare. If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of surrounding properties will not be diminished because: The hours of operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Lavallee seconded the motion. The motion passed unanimously by the voting members.

Mr. Grant advised the applicant of the 30 day appeal period.

**2015-16** Application by Brenda Rainville for a Variance to allow a boarding house in the Residential One Zone. This request is according to the City's Zoning Ordinance, Article 42, Section 18, Dimensional Regulations, Table 18 A.

**Location:** 52 Walnut St. Map 122 Lot 74, Residential One Zone

Ms. Brenda Rainville approached the podium and spoke about the project. She said the home would be more of a transitional house. Brenda also explained about His Mansion Ministry being a one year program for addicts to heal and change.

Ms. Rainville purchased 52 Walnut Street for her residence and would take in two women from His Mansion Ministry program as a place for the recovered addicts to transition into the work force and gets re-established into the community. This residence would be the home for these women who have graduated the program. Ms. Rainville also stated the Supreme Court has defined a family as a group of people living together. She hopes this situation will be considered. The Chair asked if there were abutters present opposed to this case. There were approximately thirty seven people present for the case. Approximately six people spoke against the case, abutters and non abutters spoke. Approximately four people spoke for the case. Mr. Grant read the various abutters' letters against the case into record that were received by mail. Mr. Gates asked for a show of hands of those opposed to the case. Mr. Gates asked for a show of hands from those present in support of the case.

The Chair asked if there were any people present to speak in favor of the case.

Dr. Michael Tso of the program at His Mansion Ministry building and spoke about the program and the fact he lives at the Mansion with his family. People would never be sent out into the community if they were a threat to society. He stated Ms. Rainville is doing something honorable and the people graduating need a healthy environment to re-establish life in a new way. The Chair asked for input from the Board Members.

Mr. Goldstein spoke against the boarding house, as he stated single family homes are the backbone of the community. Zoning cannot be changed for one location. Mr. Brodeur had no questions for the applicant. Mr. Azouri had no questions for the applicant. Mr. Gates, after speaking with a real estate salesperson, off the record stated that property values would go down if this was allowed. Mr. Gates stated this situation would be spot zoning if allowed.

Mr. Lavallee agreed with Mr. Gates. Mr. Spector stated Residential One Zone is not the place for a boarding house. Chair Torr did not speak in favor of the case.

Chair Torr asked for the City comment. Mr. Grant said one will have to determine if she distinguished the subject property as being unique to grant her variance. City Manager states the case does not appear to meet definitions of a hardship. There appears to be no legal reason or justification to grant variance.

Ms. Rainville approached the podium and spoke again for her case.

The Chair closed the public hearing portion of the meeting and the board worked on the criteria sheets.

Mr. Spector made a motion to deny the variance for the following reasons:

The variance will be contrary to the public interest because: It will change the character of the district. It does not consider this district's suitability for this particular use. It will diminish the value of buildings. The spirit of the ordinance is not observed because: It will change the character of the district. It does not consider this district's suitability for this particular use. Substantial justice is done because: If denied, the benefit to the community as a whole outweighs any disadvantage or harm to this individual applicant. A fair and substantial relationship does not exist between the general public purposes of the ordinance provision and the specific application of that provision to the property because: of the Residential One zone.

Mr. Gates seconded the motion. The motion passed unanimously by the voting members.

Mr. Grant advised anyone aggrieved by this decision has 30 days to appeal by asking for a rehearing.

**Other Business:** No other business.

### **Adjournment:**

Mr. Spector moved to adjourn at 8:36 p.m. Mr. Gates seconded the motion. The motion passed unanimously by roll call vote.

Respectfully submitted,

Karen L. Grenier, Building, Zoning & Licensing Secretary