



City of Rochester, New Hampshire

Building, Zoning & Licensing Dept.
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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF SEPTEMBER 14, 2016 (Approved October 12, 2016)

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
Robert Gates
Robert Goldstein
Fidae Azouri, Alternate
Leo Brodeur, Alternate

Members Absent

Randy Lavallee, excused

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

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 Office for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of August 10, 2016 were reviewed. Mr. Gates made a motion to accept the minutes as proposed. Mr. Spector seconded the motion. The motion passed unanimously by roll call vote.

The Chair asked if board members had any conflict with tonight's case. There were no conflicts. Chair Torr stated the four regular members and both alternates, alternating the cases between them both, would be voting on the cases this evening.

New Cases:

2016-22 Stephen Brochu applicant request a Variance to the terms of Article 42.19, Section b.16, to allow a lot line adjustment with less than 3,000 square feet of contiguous buildable area. **Location:** 18 Stephens Drive, 0236-0043-0000, Agricultural Zone.

Mr. Stephen Brochu approached the podium to introduce his surveyor, Kerry Fox, Fox Surveying. Mr. Fox was present in representation of Mr. Brochu. Mr. Fox stated the facts about the variance case explaining the contiguous area. The lots are existing lots of record from pre 1967. Mr. Fox then read the five variance criteria.

Chair Torr asked if any of the board members had any questions. Mr. Goldstein asked if there were houses on both lots. Mr. Fox stated there were. Chair Torr asked if there was anyone in the audience to speak for the case. He then asked if there was anyone in the audience to speak in the negative about the case. No one came forward for either question.

Chair Torr asked for the city view. Mr. Grant stated this use was existing and there would be no change to this use other than ownership, there would be no problem with this case.

Chair Torr closed the public hearing portion of the meeting; the board members worked on the criteria sheets.

Mr. Gates moved to grant the 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: It will not generate levels of noise, light, activity or traffic that are significantly different from that which currently exists.

Mr. Spector seconded the motion. The motion passed unanimously by the four regular members and Mr. Leo Brodeur alternate member.

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

2016-21 Donald and Bonnie Toy applicants request a Variance to the terms of Table 18-A and ask that said terms be waived to permit the expansion of an existing manufactured housing park/ mobile home park and allow the application of the Chapter 43 Mobile Home Park Ordinance after April 22, 2014. Chapter 42.30 c.1, to allow the expansion of a non-conforming use.

Location: 418 Old Dover Rd. Map 0256 Lot 0054 Block 0001, Agricultural Zone

Chair Torr asked who was presenting. Mr. Christopher Berry, Berry Surveying and Engineering approached the podium and addressed the board. Mr. Berry stated Mr. Don Toy owner of the property/ applicant was present. Attorney Donald Whittum was also present as legal counsel for this case. Mr. Berry shared the narrative and details of this case. He then read and answered the five criteria questions. Mr. Toy bought the lot next to his park for this expansion as it fit the character of the existing neighborhood.

Chair Torr asked if there was anyone in the audience to speak for the case, no one came forward. Chair Torr asked who was present to speak against this case.

Attorney Terence O'Rourke, City Attorney approached the podium to speak against the case.

Attorney O'Rourke referenced RSA 674:33.I.b and proving the facts of presenting a hardship for a variance. After Attorney O'Rourke's presentation about this case, he stated a hardship was not shown. Legally if there is not a hardship a variance should not be approved. Attorney O'Rourke suggested to the board not to hack away at the zoning ordinance, if there were articles in zoning that needed to be changed, then change the ordinances.

The Chair and all the board members further discussed the case. Chair Torr asked Mr. Grant for the City comments. Mr. Grant asked if a hardship existed; and what makes this property unique? If not, he suggested the board seeks ordinance 42.3 e to propose amendments to the zoning ordinance.

The City Manager concurred with the statement from Mr. Grant.

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

Mr. Gates motioned to grant the variance for the following reasons:

The variance will not be contrary to the public interest because: It will not negatively impact health and the general welfare. The spirit of the ordinance is observed because: It will not compromise the provision of adequate light and air. 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. Goldstein motioned to amend the variance stating the age of residents living in the park must be 55 or older. Mr. Gates seconded the motion.

On amendment to the variance, the board passed it with four yes votes, and one no vote, of the voting members..

The variance passed by three yes votes, to two no votes, of the voting members.

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

2016-23 CPJ Properties, LLC applicant request a Special Exception as provided in Article 42, Section 18 b. 4. of the Zoning Ordinance Table 18-D. To allow the expansion of a junk yard on Map 205 Lot 134.

Location: 0 Milton Rd. Map 0205 Lot 0134 Block 0000, Highway Commercial Zone

Mr. Chris Berry approached the podium in representation for CPJ Properties to describe the business and read the narrative about the property as there is no prior record of use as a motor vehicle junkyard on this lot.

The Chair asked if there was anyone present from the public that was for or against the case and no one came forward. Chair Torr asked the board members if they had any questions; there were none. Chair Torr asked Mr. Grant for the city's view. Mr. Grant stated this seems to be a reasonable expansion. A Special Exception does not need to prove a hardship. The City Manager had no comment.

Mr. Gates moved to Approve the Special Exception as presented. Mr. Spector seconded the motion. The motion passed unanimously by the voting members.

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

2016-24 Wissler Properties LLC. c/o Dwight Wissler applicant request a Variance as provided in Article 42.8, Section c, of the Zoning Ordinance.

To allow pavement within the side setback.

2016-25 Wissler Properties LLC. c/o Dwight Wissler applicant request a Variance as provided in Article 42.12, Section h.2., that said terms be waived to permit use of a parking lot in the conservation overlay district.

2016-26 Wissler Properties LLC. c/o Dwight Wissler applicant request a Variance. According to Article 42.12, Section h.2.H., that said terms be waived to allow land disturbance within 25 feet of the wetland edge for rehabilitation of a gravel parking lot conversion to a porous pavement infiltration system.

2016-27 Wissler Properties LLC. c/o Dwight Wissler applicant request a Variance to the terms of Article 42, Section 18.b.4., that said terms be waived to permit parking lot construction as primary use in the Granite Ridge District. (Table of Uses 18-D)

Location: 20 Farmington Rd. Map 0216-0001-0000 and 18 Farmington Rd.0221-0162-0000, Granite Ridge Zone.

Mr. Kenneth Berry approached the podium in representation of Mr. Wissler for the variance requests on 20 Farmington Rd. and 18 Farmington Rd.

The proposal is to upgrade from a gravel parking lot a porous pavement parking lot and an infiltration bed. Mr. Berry continued with the overview of the variances. Mr. Berry read the five variance criteria for the cases. The parking lot enables parking from ten to twenty vehicles. Mr. Spector asked if any of the lights were going to be in the wetlands. Mr. Berry stated the lighting has been addressed and reconfigured. There was a letter from the Conservation Commission that Mr. Grant read in to record that was very specific to the wetlands. The criteria is as follows: 1.) Less parking lot lights, lower luminaries, and/ or back-shields must be utilized so as to prevent the light into the wetland. (Unnatural lighting of wetlands / buffers negatively affects the floral/ fauna of these areas. 2.) a) Additional native wetland/ wetland buffer planters are required. B) The project wetland scientist review all plant / tree species proposed in the wetland / wetland buffer, submit a letter stating the species are appropriate. C). The wetland and wetland buffer is not to be cut any longer. It must be left to grow naturally. 3) Snow is not to be stored in the wetland / wetland buffers.

As the first three variances are for the same location and similar and the other location is owned by the same applicant the board decided to group the variances together for the conditions on the criteria sheets and for voting.

Chair Torr asked if there was anyone in the public that wanted to speak for or against the case and no one came forward. Chair Torr asked for the City view on the cases. Mr. Grant stated existing gravel to pervious pavement will be an improvement to the land. He also stated vehicle sales new and old are allowed in the Granite Ridge Development Zone according to Table 18-B in the zoning ordinance.

Chair Torr closed the public hearing portion of the meeting and the board members worked on the variance criteria sheets.

Mr. Gates motioned to grant the variances as requested for the following reasons: The variances will not reduce safety from fires, panic and other dangers. 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 be visible from the street. Mr. Azouri seconded the motion. The motion passed unanimously by roll call vote.

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

Other Business: None presented

Adjournment:

Mr. Spector moved to adjourn at 8:45 p.m., seconded by Mr. Goldstein. The motion passed unanimously by roll call vote.

Respectfully submitted,

Karen Grenier

Karen L. Grenier, Building, Zoning & Licensing Secretary