



City of Rochester, New Hampshire

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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF NOVEMBER 9, 2016 (Approved December 14, 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
Larry Spector, Vice Chair
Robert Gates
Randy Lavallee
Robert Goldstein

Members Absent

Fidae Azouri, Alternate
Leo Brodeur, Alternate-Excused

Also present: Joe Devine, Zoning Compliance Officer, City of Rochester
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 October 12, 2016 were reviewed. Mr. Gates made a motion to accept the draft minutes as proposed. Mr. LaVallee and 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 members present would be voting on the cases.

New Cases:

2016-28 Benjamin Locke applicant requests a Variance to the terms of Article 42, Table 19-A, asked that said terms be waived allow 5,663 square feet of lot area, when 15,000 square feet of lot area is required, for a four family building in the Residential 2 Zone. **Location:** 16 Pine St, 0121-0119-0000, Residential 2 Zone.

This case was withdrawn per the applicant without prejudice.

Chair Torr asked if the members had any conflicts with tonight's cases, and they did not.

Case 2016-21 Motion to Rehear:

Chair Torr made the decision to move The City Councils Request To Rehear Case 2016-21, First on the agenda before hearing Case 2016-30 Chair Torr opened the floor to the board for discussion about the request to rehear Case 2016-21. Mr. Goldstein and Mr. Spector stated if there was new information provided they were open to rehear the case. Chair Torr asked who was presenting.

Attorney O'Rourke approached the podium to reread the letter from City Council's Motion to rehear, explaining the reasons for the request. Attorney O'Rourke stated a variance hardship is to the property and not the owner of the property. This particular case did not meet the definition of a hardship. RSA 674:33 codifies the five criteria which must be met in order to obtain a variance from the Zoning Board of Adjustment. The five criteria to the property in this case were not met.

Attorney O'Rourke and ZBA Secretary, Karen Grenier also received a letter from the applicant's Attorney Donald Whittum today, November 9, 2016 at 4:00pm.

The letter stated Attorney O'Rourke used the wrong form to submit the notice to rehear Case 2016-21; when in actuality Attorney Whittum's letter was incorrect calling the motion to "rehear" and "appeal". Attorney O'Rourke then explained the definition of an appeal.

Also, Attorney Whittum's letter was submitted after the deadline for new information to be received, which is the Monday before any scheduled ZBA meeting. Therefore, the November 7th date by 12:00pm was not met. For this reason the letter was not read into record.

Mr. Spector motioned to postpone the case to the December 14, 2016 meeting.

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

The case will be postponed to the December 14, 2016 ZBA meeting.

2016-30 Jennifer Leigh Gibbs applicant, request a Variance to the terms of Article 42, Table 18-B and asked that said terms be waived, to permit a used car sales business in the Downtown Commercial Zone.

Location: 90 North Main Street, 0121-0017-0000, Downtown Commercial Zone.

Ms. Gibbs approached the podium to speak about her case. The Chair asked the board members for comments. Mr. Spector stated the intersection was a busy walking intersection, Mr. Goldstein concurred.

Chair Torr asked if there was anyone in the audience to speak for the case.

Kerry Norton, Derek Small and Mr. Foster spoke in favor of the case.

Chair Torr asked if there was anyone from the audience to speak against the case.

Ms. Molly Meulenbroek, Chair of Historic District Commission approached the podium to read into record the letter submitted by the HDC.

Mr. Michael Provost, Chair of Rochester Main Street, approached the podium to read into record the letter submitted from Rochester Main Street.

There was also a letter previously submitted for the case from the Conservation Commission to speak against the case. Mr. Joe Devine read the letter into record.

Mr. Gates asked the audience how many are out there in the public here to speak against the case. There was a show of hands. Chair Torr asked for a representative to speak for the public.

Stacy Marchionni, abutter, owner of Revolution Restaurant, and Chair of the River Walk Committee approached the podium to speak against the case and stated the reasons for such. Ms. Marchionni read into record the letter from the River Walk Committee.

Mr. Tewell, Ms. Lisa Stanley and Peter Bruckner approached the podium to speak against the case.

Chair Torr asked the board members for their statements. Board members concurred it was not an appropriate location for this business in the downtown.

Chair Torr asked for the City's view on this case.

Mr. Devine read the comments from Mr. Grant. If passed, may want to limit number of cars for display, and no visual aids or gimmicks, etc. Mr. Devine also read the City Manager's comments; not really the best use of this downtown location.

Chair Torr asked Ms. Gibbs to read the five criteria for her case. Chair Torr closed the public hearing portion of the meeting and the board members worked on the criteria sheets.

Chair Torr asked for a motion to the case. Mr. Spector motioned to *deny* the case 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. The spirit of the ordinance is not observed because: It will change the character of the district, and it does not consider this district's suitability for this particular use. III Substantial justice is done because: If denied, the benefit to the community as a whole outweighs any disadvantage or harm to this individual applicant.

Literal enforcement of the provisions of the ordinance will not result in an unnecessary hardship. For the purposes of this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: i. 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: The property is in the downtown district and it will change the character of the district.

Mr. LaVallee seconded the motion.

The motion to deny was passed unanimously from the voting members.

Other Business:

The Chair asked if there was any other business. There was none.

Adjournment:

Mr. Spector motioned to adjourn the meeting at 7:50pm. Mr. LaVallee seconded the motion.

The motion passed unanimously by roll call vote.

Respectfully submitted,

Karen L. Grenier, Building, Zoning & Licensing Secretary