



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. Z-22-39

DATE FILED 11/16/22

C91
ZONING BOARD CLERK

Applicant:

86 Church Street, LLC by Greg Mahanna, its Manager

E-mail: gmahanna@aaminc.biz

Phone: 603-498-1473

Applicant Address: 120 Aviation Avenue Portsmouth NH 03801

Property Owner (if different): 86 Church Street LLC

Property Owner Address: 120 Aviation Avenue Portsmouth NH 03801

Variance Address: 86 Church St, Gonic

Map Lot and Block No: 86 (0258-0008-000)

Description of Property: 86 is improved with an existing multi-family use containing 12 units

Proposed use or existing use affected: Amendment to Plan related to Approved Variance for 86 Church Street (Z-22-23)

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 30.3:A

and asks that said terms be waived to permit Amendment to plan presented in APPROVED variance for 86 Church St.,

the amended plan relocates the building to be added from 84 Church St., to 86 Church St., as requested by the abutter

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: Greg Mahanna

Date: 11/16/22



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

1) Granting the variance would not be contrary to the public interest because:

PLEASE SEE ATTACHED

2) If the variance were granted, the spirit of the ordinance would be observed because:

PLEASE SEE ATTACHED

3) Granting the variance would do substantial justice because:

PLEASE SEE ATTACHED

4.) If the variance were granted, the values of the surrounding properties would not be diminished because:

PLEASE SEE ATTACHED

5.) Unnecessary Hardship:

a. Owning to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

PLEASE SEE ATTACHED

And:

ii. The proposed use is a reasonable one because:

PLEASE SEE ATTACHED

b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

PLEASE SEE ATTACHED

86 Church Street, LLC
Variance Request – Expansion of Non-Conforming Use
86 Church Street
Rochester, New Hampshire 03867
Tax Map 258, Lot 8

General Overview and Narrative

The Rochester Zoning Board of Adjustment (“ZBA”), has already found in its case number Z-22-23, that the Variance Criteria set forth in RSA 674:33 have been met with regard to the property located at and known and numbered as 86 Church Street, (Tax map 258, Lot 8), (“86 Church”), and approved the variance sought. The ZBA denied the variance request is said case as to 84 Church Street, (Tax Map 258, Lot 7), (“84 Church”), finding that the parcel lacked the hardship that was present on 86 Church. The ZBA did not address in its Order dated September 26, 2022, the request contained in the variance application to, “combine the two parcels and add 30 addition (*sic*) townhouses on the 86 property,” rather it approved the request for the expansion of the nonconforming use (e.g. the addition of 30 units) on 86 Church alone and denied the addition on 84 Church. Following the ZBA’s approval, the Applicant undertook additional studies by and through Norway Plains Associates, Inc., related to the lot line adjustment between 86 Church and 84 Church, where the abandonment of the existing lot line between the two lots in common ownership was not addressed and therefore not specifically approved, nor denied by the ZBA’s Notice of Decision. The Applicant further studied the potential of relocating the building proposed to be located behind the existing single-family residence on 84 Church, (such building would have been located on the combined single lot had the request to combined the lots been approved), to some other area of 86 Church. This study was undertaken specifically in an effort to address the concerns expressed by Mr. Connelly, the abutter at 82 Church Street, who appeared at the rehearing held September 14, 2022.

The Applicant appears before the ZBA now seeking Approval of the amendment to the plan submitted in case Z-22-23. The plan, as amended, will result in 84 Church Street remaining a single-family lot of proper size and dimension in accordance with the provisions of the Ordinance and also permit the relocation of the of the building to another area of 86 Church while remaining in compliance with the minimum square footage per dwelling unit also required by the Ordinance.

A. The variance will not be contrary to the public interest;

The variance was approved by the ZBA upon the Applicants presentation that the variance is not contrary to the public interest because it will allow the proposed allotted density to be placed in a previously developed area, while leaving the single-family residence currently located on the sister lot in place and that the proposed townhouses will be in keeping with the existing townhouse structures on the property and will conform to the existing land use. The amended plan does all of the foregoing in that the single-family house and a lot meeting the dimensional and lot size requirements of the ordinance will still result while the approved expansion of the existing non-conforming use will be entirely on 86 Church Street.

The Applicant further presented originally that the variance will not be contrary to the public interest since adding needed housing and additional municipal value that will utilize the existing infrastructure sized appropriately for the desired additional density will not place additional burden on the public utilities by avoiding the need for addition of public infrastructure. Such use of the existing infrastructure toward its intended potential without adding to the public infrastructure is in the public's interest. The desired expansion of the existing use is congruent with other land uses in the area directly across the Route 125 thoroughfare and the addition of units in this deep lot will not alter the essential character of the neighborhood, will not threaten public health, safety or welfare or otherwise injure the public rights. All of the foregoing previously presented to the ZBA remain the same under the amended plan.

B. The spirit of the ordinance is observed;

The variance was approved by the ZBA upon the Applicants presentation that the variance as granted is in keeping with the spirit of the ordinance, and that the spirit of the ordinance will be observed since the addition of the units requested is permitted by the ordinance based on the minimum lot area per dwelling unit requirements, that the added density in the manner proposed does at the same time preserve significant undeveloped space abutting the Cocheco River and does permit the development within the density ring established by the City for increased residential density.

C. Substantial justice is done;

The variance was approved by the ZBA upon the Applicants presentation that Substantial justice is done in this case by allowing the productive development of a site already containing the use to be expanded, by expanding that permitted non-conforming use in an area that has congruent development on nearby properties and is sited in the City's density ring. The approval made of the variance allowing expansion of the multi-family use in the AG Zone does not detract from or otherwise minimize the importance or impact of the ordinance especially given the project's proximity to surrounding parcels of similar development and recreational business services that will benefit from the increased residential occupation of persons in the area, especially within the City's density ring. As noted above, substantial justice is done by the approval made in the instance case where the project is already equipped with water and sewer infrastructure of a nature that is capable of supporting the requested increase in density, thus avoiding the need for additional infrastructure and the short and long-term costs associated with same. The benefit to the applicant and the persons located in or desiring to relocate to the City, by allowing the increased in density far outweighs the minor modification in the ordinance as it pertains to the expansion of the existing use on this parcel of land, especially where the City has delineated the density ring to include the entirety of the subject parcel.

D. The values of the surrounding properties are not diminished;

The variance was approved by the ZBA upon the Applicants presentation that the variance will not diminish the values of the surrounding properties because the development will occur upon a lot where the same use is existing and in an area where other neighboring lots are developed in a manner of similar or significantly higher density while leaving a significant portion of the parcel

in its natural state aside from the anticipated addition of one or more nature trails to permit the residents of the project to enjoy the natural elements of the area. Further, to the extent that residential density of the lot will be increase with townhouse style homes that lend themselves to the potential for condominium ownership, the value of any such units owned and sold as attached single family residential condominium units, would provide for an increase in modern single family condominium comparable units that would tend to increase the value of similar residential units in the immediate area. Finally, the City determined that the area within the density ring established by the City are most susceptible to beneficial development of increased density, thereby increasing the overall value of land in the density ring.

E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The City staff review of the variance application initially submitted and approved by the ZBA at rehearing, determined that the property has a hardship in that it is already improved with multi-family structures upon a previous permitted use by the City, and that the expansion of such use within the City's density ring should and ought to be permitted.

a. Owning the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The purposes of the City's ordinance generally are to promote harmonious land uses throughout the City's various zones. Notwithstanding the foregoing, the ordinance does not expressly permit the existing multi-family housing use to which the subject parcel is put in the AG zone. The existing use was previously permitted upon due consideration of the general purposes of the City's overall zoning. There is no fair and substantial relationship between the prohibitions of multi-family within the AG Zone and this parcel given the existing use and its proximity to abutting land uses, the proximity to recreational uses and nearby economic centers and the inclusion of the property in the City's density ring, where the City intends for increased density uses. This property is further distinguished from the properties immediately abutting it because it currently contains multi-family use and a significant recreational opportunity given its frontage both on the abutting golf course and the Cochemo River. No other property in the area enjoys both attributes that would permit the expansion of an existing use to increase the number of rentable or salable units within the City and simultaneously increase the access of its residents to the recreational offerings of the area.

ii. The proposed use is a reasonable one because:

The proposed use is a reasonable one because it allows for the expansion of an existing use by development of the parcel of land while respecting the needs of the area parcels to retain the rural feel of their lots and without compromising viewshed from Route 125 or Church Street, and also while at the same time permitting a density that is congruent with the existing nearby land uses within the City's density ring.

b. If the criteria in subparagraph (i), above, are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The subject parcel is special in a number of ways, including the general size, shape and depth of the parcel, its ability to adjust lot lines with the abutting lot (84 Church Street), under common ownership and its general developable nature in proximity to major routes of travel and businesses, as well as its location in the AG zone, its existing non-conforming nature, the existing water and sewer infrastructure sized for a development of an increased but as yet undeveloped density, and its location within the City's density ring. Adding to the foregoing, the lot's ability to be developed in the manner requested while still maintaining its natural beauty and increasing its inhabitants use and enjoyment of the recreational opportunities abutting it in the form of the Rochester Country Club and the Cocheco River, further illustrate the special conditions of this property that distinguish it from other properties in the area, that make it one that cannot be reasonably used in strict conformance with the ordinance.

Due to the existing use of the property that would make a strict agricultural use incongruent with the well-established multi-family residential use to which the parcel has been put, in conjunction with the available density yield based on the Dimensional Standards the property cannot be reasonably used in strict conformance with the ordinance, and a variance approved by the ZBA was therefore necessary to enable a reasonable use of it.



RESERVED REGISTRY OF DEEDS

DENSITY CALCULATIONS:
THE SUBJECT PARCELS FALL COMPLETELY WITHIN THE HALF MILE RADIUS RING
OF DOWNTOWN GONIC. 5,000 SQUARE FEET REQUIRED PER DWELLING UNIT

MAP 258, LOT 8
213,536± SQUARE FEET OR 4.90 ACRES
213,536 SF / 5,000 SF PER UNIT = 42.7 UNITS ALLOWABLE
42.7 UNITS - 12 EXISTING UNITS = 30.7 ADDITIONAL UNITS ALLOWABLE

5 ADDITIONAL 6 UNIT BUILDINGS PROPOSED = 30 UNITS PROPOSED

MAP 141, LOT 42
UNKNOWN OWNER
18 WAKEFIELD STREET,
ROCHESTER, NH 03867
SCRD BK. 1458, PG. 131

NOTES:

1. THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE A LOT LINE ADJUSTMENT AND PROPOSED FURTHER DEVELOPMENT OF LOT 8.
2. TAX MAP 258, LOT 7: EXISTING LOT AREA = 0.76± ACRES
PROPOSED LOT AREA = 0.46± ACRES
TAX MAP 258, LOT 8: EXISTING LOT AREA = 4.60± ACRES
PROPOSED LOT AREA = 4.90± ACRES
3. PARCEL IS ZONED AGRICULTURAL
4. MINIMUM LOT REQUIREMENTS FOR THE R2 ZONE:
LOT SIZE = 20,000 SF WITH SEWER AND WATER, 5,000 SF PER DWELLING UNIT; FRONTAGE = 100'
5. BUILDING SETBACKS FOR THE R2 ZONE: FY. = 15', SY. = 10', RY. = 25'
6. THE LOTS ARE SERVICED BY THE MUNICIPAL WATER AND SEWER SYSTEM.
7. A PORTION OF THE LOT IS LOCATED WITHIN ZONE "AE" AS SHOWN ON THE FLOOD INSURANCE RATE MAP DATED MAY 17, 2005, COMMUNITY PANEL 33017C0213D. NO EXISTING OR PROPOSED BUILDINGS ARE OR WILL BE LOCATED WITHIN THE FLOOD ZONE.
8. DISTANCES SHOWN ARE GROUND DISTANCES AS DEPICTED ON THE REFERENCE PLAN, AND VERTICAL DATUM IS NAVD83 BASED ON DATA FROM AVAILABLE GIS SOURCES. HORIZONTAL DATUM IS NAD83, NH STATE PLANE 2800.
9. RESIDENTIAL PARKING REQUIREMENTS - 2 SPACES / DWELLING UNIT
REQUIRED : 2 SPACES / UNIT * 42 UNITS = 84 SPACES
PROVIDED : EXISTING = 26 SPACES
PROPOSED = 58 SPACES
TOTAL = 84 SPACES

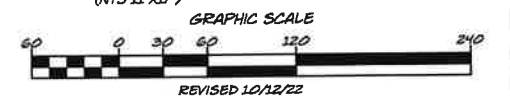
REFERENCE PLANS:

1. "FINAL PLAN, FAIRWAYS CORP, GONIC, ROCHESTER, NEW HAMPSHIRE"
BY D.L. DAVIS & ASSOCIATES
APPROVED BY THE ROCHESTER PLANNING BOARD ON DECEMBER 18, 1979
RECORDED AT THE SCRD AS PLAN 19A-66
2. "AS-BUILT SEWER PLANS, CITY OF ROCHESTER"
ON FILE WITH THE CITY OF ROCHESTER ENGINEERING DEPT.

TAX MAP 258, LOTS 7 & 8
OWNER OF RECORD:
86 CHURCH STREET, LLC
120 AVIATION AVENUE
PORTSMOUTH, N.H. 03801-2898
BOOK 4626, PG 481
FEASIBILITY SKETCH
84 & 86 CHURCH STREET
ROCHESTER
STRAFFORD COUNTY
NEW HAMPSHIRE

FOR:
86 CHURCH STREET LLC

1" = 60' AUGUST 2022
(NTS 11"x17")



SKETCH 2

MAP 258, LOT 63
MALBU TWO ASSOCIATES, LLC &
JCM MANAGEMENT COMPANY
540 NORTH COMMERCIAL STREET,
MANCHESTER, NH 03101-1148
SCRD BK. 2875, PG. 636

FILE NO. 175
PLAN NO. C-3147
DWG. NO. 20357 SK-2

31 MOONEY STREET, ALTON, NH 603-875-3948

NORWAY PLAINS ASSOCIATES, INC.

2 CONTINENTAL BLVD., ROCHESTER, NH 603-335-3948

§ 275-30.3 Changes to nonconforming property.

A. Nonconforming property or a nonconforming condition may not be expanded, enlarged, extended, or intensified except as specifically provided for in this article and not without appropriate approvals from the Historic District Commission, Conservation Commission, ZBA and Planning Board.

B. A reduction in the nonconformity of a nonconforming use, structure or condition must be approved by the Planning and Development Department and the Director of Building, Zoning, and Licensing Services and may also be required to obtain Historic District Commission, ZBA and Planning Board approvals if the Director of Building, Zoning, and Licensing Services determines that issues associated with the changes are problematic and fall within the jurisdiction of these boards or commission.

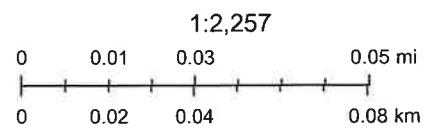
86 Church Street



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-  Zoning - Density Rings
-  Tax Parcels

Parcel Info



Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, Esri Community Maps Contributors, Rochester GIS, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Description	Element	Cd	Description							
Model	94	Commercial	Half Bath Ratin									
Style	23M	MULTIFAMILY	Extra Fixture(s)	0								
Grade	C-	Avg. (-)	Extra Fix Rating									
Stories	2		MIXED USE									
Units	6		Code	Description	Percentage							
Residential Unit	6		1120	9-12 APTS	100							
Comm Units	0.00				0							
Wall Height	04	VINYL	COST / MARKET VALUATION									
Exterior Wall 1	0		RCN		616,334							
Exterior Wall 2	01	GABLE	Year Built		1979							
2nd Ext Wall %	01	ASPH SHINGLE DRYWALL	Depreciation Code		G							
Roof Structure	08	AVERAGE	Remodel Rating		31							
Interior Wall 1	12	CONCRETE	Year Remodeled									
Interior Wall 2	100.00		Depreciation %		1,000							
Interior Floor 1	02	GAS	Functional Obsol									
Interior Floor 2	03	FORCED HW	Economic Obsol									
Basement Floor	0.00		Trend Factor									
% Heated	6.00		Special Adj									
Heat Fuel	0.00		Condition %		69							
Heat Type	12		Percent Good		425,300							
2nd Heat Type	6		RCNLD									
2nd % Heated	A	SAME	Dep % Ovr									
# Heat Systems	0		Dep Ovr Comment									
AC Percent	0		Misc Imp Ovr									
Bedrooms	0		Misc Imp Ovr Comment									
Full Bath(s)	0		Cost to Cure Ovr									
Bath Rating	0		Cost to Cure Ovr Comment									
3/4 Bath(s)												
3/4 Bath Rating												
Half Bath(s)												
Half Bath Ratin												
Extra Fixture(s)	0											
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)												
Code	Description	L/B	Qty	Dim 1	Dim 2	Grade	Condition	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value
PA	PAVING ASPH	L	1	1	9000	C	AV	1980	50	2.57	1.00	11,600
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Floor Area	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value	Unit Cost	Undeprc Value	
BMT	BASEMENT	0	2,880	2,880	0	2,880	720	23.39	67,377	23.39	67,377	
FFL	1ST FLOOR	2,880	2,880	2,880	0	2,880	93.58	93.58	269,509	93.58	269,509	
OFF	OPEN PORCH	0	0	0	0	0	46.23	46.23	8,876	46.23	8,876	
SFL	2ND FLOOR	2,880	2,880	2,880	0	2,880	93.58	93.58	269,509	93.58	269,509	
STP	STOOP	0	0	0	0	0	17.17	17.17	1,065	17.17	1,065	
11 Gross Liv / Lease Area								5,760	8,894	5,480		616,336





Owner1	Owner2	BillingAddress	City State Zip
OCTOBER FINANCIAL GROUP INC		P O BOX 7369	ROCHESTER, NH 03839-7369
ARMITAGE PERLEY E JR &	ARMITAGE RACHELLE C	90 CHURCH ST	ROCHESTER, NH 03839-5200
CONNELLY DANIEL		82 CHURCH ST	ROCHESTER, NH 03839-5200
68 HEMINGWAY LLC		440 HANOVER ST	MANCHESTER, NH 03104
86 CHURCH STREET LLC		120 AVIATION AVE	PORTSMOUTH, NH 03801-2898
86 CHURCH STREET LLC		120 AVIATION AVE	PORTSMOUTH, NH 03801-2898
UNKNOWN OWNER		19 WAKEFIELD ST	ROCHESTER, NH 03867