



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. 2-23-61

DATE FILED 11/8/23

CJ
ZONING BOARD CLERK

Applicant:

Daniel LaGrange C/O Brett W. Allard, Esq., Shaughnessy Allard, PLLC

E-mail: brett@salaw-nh.com

Phone: (603) 644-4357 x3

Applicant Address: 24 Eastman Avenue, Suite C3, Bedford, NH 03110

Property Owner (if different): Same

Property Owner Address: Same

Variance Address: 57-59 Cross Road

Map Lot and Block No: Tax Map 205, Lot 34

Description of Property: 1.22 acres - see attached plan.

Proposed use or existing use affected: Single-family use proposed on new lot; two-family use to remain on existing house lot

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 19.1

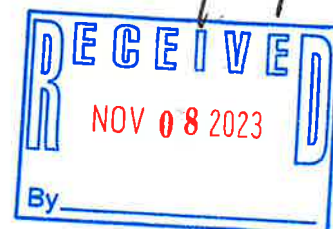
and asks that said terms be waived to permit a two-lot subdivision, as shown on the enclosed plan and described in the enclosed narrative.

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: Brett W. Allard

Brett W. Allard, Esq., Attorney for the Applicant/Owner

Date: 11/8/23





City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

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

See attached.

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

See attached.

3) Granting the variance would do substantial justice because:

See attached.

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

See attached.

5.) Unnecessary Hardship:

a. Owing 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:

See attached.

And:

ii. The proposed use is a reasonable one because:

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.

N/A

Introduction

Daniel LaGrange (the “Applicant”) proposes a two-lot subdivision of his property situated at 57-59 Cross Road (Tax Map 205, Lot 34). The property is situated at the corner of Cross Road and Stacy Drive in the Agricultural (“AG”) District. The lot is currently connected to municipal water and serviced by a private septic system. The existing property is approximately 1.22 acres (53,062 square feet) and has approximately 119.60 feet of frontage on Cross Road and approximately 247.98 feet of frontage on Stacy Drive. The property currently maintains a two-family duplex and two sheds on the southerly half of the lot. Driveway access is via a curb cut on Cross Road.

As shown on the enclosed plan, Proposed Lot 34 will consist of approximately 0.62 acres (26,872 square feet). Proposed Lot 34 will retain the existing duplex, sheds, driveway/curb cut, and 119.60 feet of frontage on Cross Road. Proposed Lot 34 will also have approximately 97.97 feet of frontage on Stacy Drive. Proposed Lot A will consist of approximately 0.60 acres (26,191 square feet) with approximately 150.01 feet of frontage on Stacy Drive. The Applicant anticipates Proposed Lot A being improved in the future with a single-family dwelling, and driveway access would be via a curb cut on Stacy Drive.

Section 275-19.1 and Table 19-A of the zoning ordinance (the “Dimensional Standards”) require a minimum lot size of 45,000 square feet for lots improved with two-family dwellings in the AG District that are on municipal water but not municipal sewer. Accordingly, the Applicant requests a variance to permit the proposed two-lot subdivision with Proposed Lot 34 having 26,872 square feet of area where 45,000 square feet is required. The Dimensional Standards also require 150 feet of minimum lot frontage for lots improved with two-family dwellings in the AG District. While Proposed Lot 34 has approximately 217.57 feet of total frontage, 119.60 feet is on Cross Road and 97.97 feet is on Stacy Drive, and the frontage definitions in the zoning ordinance preclude adding together frontages on separate public streets to satisfy the minimum requirement. Accordingly, the Applicant requests a variance to permit the proposed two-lot subdivision with Proposed Lot 34 having 119.60 feet of frontage where 150 feet is required.

The Dimensional Standards require a minimum lot size of 30,000 square feet for lots improved with single-family dwellings in the AG District that are on municipal water but not municipal sewer. Accordingly, the Applicant requests a variance to permit the proposed two-lot subdivision with Proposed Lot A having 26,191 square feet of area where 30,000 square feet is required. Proposed Lot A is fully compliant with the Dimensional Standard’s 150-foot minimum frontage requirement applicable to lots improved with single-family dwellings in the AG District.

For the reasons set forth below, the Applicant submits that he has satisfied the five variance criteria and requests that the Board grant within-requested variances.

1 & 2. Granting the variances will not be contrary to the public interest and will be consistent with the spirit of the ordinance.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. See Farrar v. City of Keene, 158 N.H. 684 (2009). The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare. Id. Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. Id. If you meet one test you almost certainly meet the other. Id. As such, the Applicant addresses these two criteria together.

The general purpose of minimum lot size and frontage requirements are to minimize overcrowding and congestion, ensure that lots will have sufficient buildable area and sufficient areas for sanitary facilities, and ensure that lots have safe and sufficient access to the greater roadway network. Since the property is serviced by municipal water, the lot can support the Applicant's proposal because no additional land needs to be dedicated to a well and resulting well radius buffer, and there is adequate land for a second septic system on Proposed Lot A. This is particularly the case because there are no wetlands on the property – the existing lot is entirely dry upland. Proposed Lot 34 will maintain its existing driveway curb cut off Cross Road and a new driveway curb cut can be safely constructed on Stacy Drive for Proposed Lot A. Moreover, the proposal will not alter the essential character of the neighborhood or threaten public health and safety because both the existing two-family dwelling and proposed single-family dwelling are permitted by right in the AG District and are consistent with the character of the area, which is primarily residential. There will not be any overcrowding or congestion in the neighborhood if the variances are granted. Indeed, as set forth in more detail below, many other properties in the area are similar or smaller in size than both proposed lots. There will be no adverse impact or injury to any public rights if the variances are granted. Therefore, granting the variances would not be contrary to the public interest and will be consistent with the spirit of the zoning ordinance.

3. Granting the variances would do substantial justice.

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). There is no injury to the public if the variances are granted. There is no gain to the public if the variances are denied. There is only loss to the Applicant if the variances are denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variances are denied outweighs any loss or injury to the public if the variances are granted. Further, as discussed in more detail below relative to the size of other lots in the area, the proposed subdivision is "appropriate for the area". Granting variances for requests that are appropriate for the area does substantial justice. See U-Haul Co. of New Hampshire & Vermont v. City of

Concord, 122 N.H. 910, 913 (1982). Therefore, granting the variances would do substantial justice.

4. The values of surrounding properties will not be diminished.

If the variances are granted, the lot will remain consistent with the residential character of the other lots in the neighborhood such that there will be no adverse effect on surrounding property values. There are no proposed external changes in connection with this application relative to Proposed Lot 34 because the two-family dwelling, sheds, and related infrastructure already exist in their current footprints. If the variances are granted, the only proposed external change in connection with this application is the addition of a single-family dwelling and related infrastructure on Proposed Lot A. The proposed single-family dwelling fits entirely within the building envelope and there is sufficient frontage for a new driveway curb cut on Stacy Drive. The Applicant is not seeking to build any new structures within any abutter setbacks such that the values of abutting properties could be compromised. Therefore, surrounding property values will not be diminished. Moreover, if the variances are granted, the Applicant will be required to seek subdivision approval from the Planning Board, which will further ensure that surrounding property values will not be diminished.

5. Unnecessary hardship.

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable. See RSA 674:33.

The existing property is distinguishable from other properties in the area. Most importantly, particularly in the context of variance requests to allow for a subdivision, the property is much larger than the overwhelming majority of other lots in the area. See Rancourt v. City of Manchester, 149 N.H. 51 (2003) (affirming the ZBA's decision to grant a variance because the fact that the subject lot was larger than most surrounding lots in the area constituted a special condition of the property justifying a finding of hardship). By way of example, the existing property is approximately 1.22 acres. According to the Town's GIS tax map data, there are ten (10) developed residential lots with driveway access off Cross Road in the vicinity of the Applicant's property east of the Spaulding Turnpike overpass.¹ None of these lots exceed 0.69 acres. Further, there are seven (7) lots with driveway access off Stacy Drive just north of the Applicant's property. None of these lots exceed 0.65 acres, and most are smaller. As such, the Applicant's property – when viewed in the context of the surrounding area – appears to be a double or triple lot. The Applicant's lot is also unique in that it is a corner lot with frontage on two public streets that also abuts a State highway.

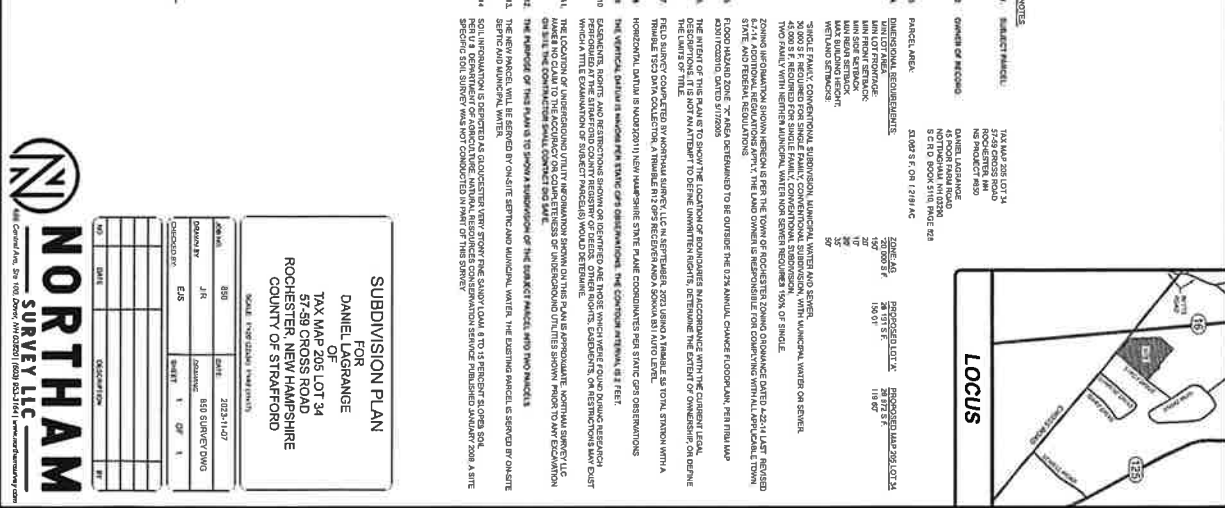
¹ The Applicant's lot abuts the State's Route 16 Spaulding Turnpike right-of-way and, as such, there are no other lots on Cross Road west of the Applicant's lot before reaching the overpass.

Owing to these special conditions, among others, relative to other properties in the area, there is no fair and substantial relationship between the purpose of the zoning ordinance's minimum lot size and frontage requirements and their application here. The fact that the Applicant's property is a larger corner lot consisting entirely of dry upland with frontage on multiple public streets and is tied into municipal water make it particularly suitable for the proposed subdivision. No additional land needs to be dedicated to a well and resulting well radius buffer, there is adequate land for a second septic system on Proposed Lot A, and the proposed single-family dwelling on same fits entirely within the building envelope. As such, the Applicant's lot can support the proposed subdivision. Proposed Lot 34 will maintain its existing driveway curb cut off Cross Road, so granting a frontage variance for Lot 34 will not affect its safe and sufficient access that will remain unchanged. A new driveway curb cut can be safely constructed on Stacy Drive for Proposed Lot A – which meets the minimum frontage requirement – so there will be safe and sufficient access to both lots. Indeed, even after the subdivision, both proposed lots will be similar to or larger than most other lots in the area, so there will not be any overcrowding or congestion in the area if the variances are granted. In other words, notwithstanding strict application of the restrictions in the zoning ordinance, this property is particularly well suited for a two-lot subdivision vis-à-vis other properties in the area.

Accordingly, the purposes that the zoning ordinance seeks to protect are not in any way threatened if the variances are granted. Therefore, even though the proposed subdivision requires these variances, the purposes that the zoning ordinance seeks to protect will be preserved.

The proposed use is reasonable.

For all the foregoing reasons, the proposed use is reasonable. Moreover, single-family and two-family uses are permitted by right in the AG District, and permitted uses are *per se* reasonable. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007).



NORTHAM
— SURVEY LLC —
444 Central Ave., Ste 100, Dover, NH 03820 | (603) 853.1164 | www.northamsurvey.com

ZONING
275 Attachment 6
City of Rochester

Table 19-A Dimensional Standards - Residential Districts
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

	Lots			Setbacks				Other				Standards, Notes and References	
	Minimum Lot Area (square feet)	Minimum Frontage (feet)	Minimum Lot Area/ Dwelling Unit (square feet)	Minimum Front (feet)	Maximum Front (feet)	Minimum Side (feet)	Minimum Rear (feet)	Maximum Building Footprint	Maximum Lot Coverage	Maximum Number of Stories	Minimum Building Height (feet)	Maximum Building Height (feet)	A "—" means there is no dimensional standard for this item
Residential Districts													
Residential-1 (R1)													
Single-family	10,000	100	—	10	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
All other uses	10,000	100	—	10	—	10	20	30%	35%	—	—	35	
Residential-2 (R2)													
Single-family	6,000	60	—	10	—	8	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	9,000	80	—	10	—	8	20	30%	45%	—	—	35	See Article 19, Dimensional Standards
Three- and four-family	12,000 and 15,000	80	—	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
Five- or more family	30,000	100	5,000 or 7,500	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
All other uses	9,000	80	—	10	—	8	20	30%	35%	—	—	35	
Neighborhood Mixed Use (NMI)													
All uses	6,000	60	— ²	—	25	5' ⁴	20	—	90%	3	20	20	See Article 19, Dimensional Standards
Agricultural (AG)													
Single-family, conventional subdivision, municipal water and sewer	20,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, municipal water or sewer	30,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, neither municipal water nor sewer	45,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	150% of single	150	—	20	—	10	20	30%	40%	—	—	—	See Article 19, Dimensional Standards
Single-family dwelling - conservation subdivision	6,000	60	—	20	—	10	20	30%	35%	—	—	35	See Article 33, Conservation Subdivisions
All other uses	45,000	150	5,000 or 7,500	20	—	10	20	—	40%	—	—	35	

NOTES:
 Note 1: For lots that adjoin a residential district, the side setback on the side adjoining the residential district shall be the larger of the required side setback in the subject commercial zone or the adjoining residential zone.
 Note 2: For lots without both water and sewer, 10,000 square feet of lot area is required per additional dwelling unit beyond one.



1 inch = 80 Feet




CAI Technologies
Precision Mapping Geospatial Solutions

November 15, 2023



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

CURRENT OWNER LAGRANGE DANIEL 45 POOR FARM RD NOTTINGHAM NH 03290	UTILITIES		TOPO	ZONING		CURRENT ASSESSMENT			VISION ROCHESTER, NH 
	0 SEPTIC	0 LEVEL	A	AGRICULTURAL	LUC Co	Prior Assessed	Current Assesse		
	0 WELL	NEIGHBORHOOD	NHBD NAME		102	79,900	90,100		
	0 NONE	2404	2 TO 4 NORTH SUBU		102	45,500	45,500		
	UTL/ST/ TRAF	EXEMPTIONS		102		4,700	4,700		
Year		Code	Description						
0 PAVED									
0 MEDIUM									
LEGAL DESCRIPTION									

SALES INFORMATION-GRANTEE		BOOK/PAGE	SALE DATE	SALE PRICE	SALE CODE	PREVIOUS ASSESSMENTS (HISTORY)					
LAGRANGE DANIEL POLYCHRONIS PAUL D POLYCHRONIS PAUL D POLYCHRONIS BLANCHE H TRUST POLYCHRONIS PAUL & BLANCHE	5110	828	05-12-2023	335,000	81	Year	Descr	Prior Assesse	Year	Descr	Prior Assesse
	5110	824	05-12-2023	0	02	2020	BLDG	79,900	2021	BLDG	79,900
	5051	236	07-19-2022	0	81		LAND	45,500		LAND	45,500
	2367	615	08-28-2001	2,667	44		OB	4,400		OB	4,700
	1223	481	04-30-1986	87,900	99						
						Total		129,800	Total		130,100
BUILDING NOTES						APPRAISED VALUE SUMMARY					

BUILDING PERMIT RECORD							Appraised Building Value (Card)		90,100	
Issue Date	Permit Id	Description	Price	Insp Date	% C	Stat	Notes	Appraised Extra Feature Value (Bldg)	0	
01-26-2010	10-57	ELECTRIC	300	03-08-2010	100	CE	BMT. LIGHT; METER FOR WATER PUMP;	Appraised Outbuilding Value (Bldg)	4,700	
10-24-2008	08-1380	ELECTRIC	300	02-11-2009	100	CE		Appraised Land Value (Bldg)	45,500	
08-03-2007	07-1005	ELECTRIC	500	03-17-2008	100	CE		Total Appraised Parcel Value	140,300	
							Valuation Method	C		
							VISIT / CHANGE HISTORY			
Date		Id		Purpost/Result		Notes				
05-31-2023		HM		DEED CHANGE		FOLLOW UP P				
05-02-2023		TH		EXT ONLY		PER PROPERT				
07-27-2022		HM		DEED CHANGE		PER OWNERS				
02-06-2020		LA		OWN ADD CHG		PER REMITTE				
06-28-2017		DF		OWN ADD CHG		Permit #. 10-57				
05-14-2012		VS		OWN ADD CHG						
03-08-2010		NM		EXT ONLY						

LAND LINE VALUATION SECTION																									
B	LUC	Description	LandU	Land Type	Loc Adj	UnitPric	Size Adj	Cond	Nbhd	Nb Adj	Inf1	Inf11 Adj	Inf12	Inf12 Adj	Inf13	Inf13 Adj	Adj UnitPrice	Appraised Value	Assessed Value	Notes					
1	1020	TWO FAMIL	1.000	PRIMARY	P	1.000	1.000000	1.00	2404	1.000							45,000	45,000	45,000						
1	1020	TWO FAMIL	0.200	EXCESS A	E	1.000	1.000000	1.00	2404	1.000							2,500	500	500						
Total Card Land Units													1.20	AC	Total Land Value										45,500

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Description	Element	Cd	Description							
Style	20M	DUPLEX	Solar	0								
Grade	C-	AVG. (-)	Central Vac	0								
Stories	1		Nbhd Modifier									
Units	2		MH Make									
Frame	01	WOOD	MH Serial #		BLUE							
Foundation	02	CONC BLOCK	Color:Mdl #;D									
Exterior Wall 1	19	TEX 1 11	CONDO DATA									
Roof Structure	01	GABLE										
Roof Cover	02	RIB/CORR MTL										
View	N	NONE	Condo Main									
Interior Wall 1	06	AVERAGE	Adjust Type									
Interior Floor 1	08	AVERAGE	Condo Floor									
Basement Flo			Condo Location									
Bsmt Garage	0		COST / MARKET VALUATION									
Finished Bsmt			Building Value New		160,844							
FBLA			Year Built		1966							
Rec Room	07	SEPARATE	Depreciation Code		AG							
Electric	02	TYPICAL	Remodel Rating									
Insulation	SAME	SAME	Year Remodeled		44							
Interior/Exterio	100.00		Depreciation %									
% Heated	01	OIL	Functional Obsol									
Heat Fuel	01	FORCED W/A	Economic Obsol									
Heat Type	01		Trend Factor		1.000							
AC Percent	0.00		Special Adj									
Bedrooms	4		Condition %		56							
Full Bath(s)	2		Percent Good		90,100							
3/4 Bath(s)	0		RCNLD									
Half Bath(s)	0		Dep % Ovr									
Extra Fixture(s)	0		Dep Ovr Comment									
Kitchen(s)	2		Misc Imp Ovr									
Extra Kitchen(0		Misc Imp Ovr Comment									
Total Rooms	9		Cost to Cure Ovr									
Fireplace(s)	0		Cost to Cure Ovr Comment									
W.S. Flues	0		Cost to Cure Ovr Comment									
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
10	CANOPY	L	1	10	13	E	FR	2000	65	14.80	0.75	900
01	SHED FRAME	L	1	12	12	D	AV	1995	60	28.15	0.87	2,100
01	SHED FRAME	L	1	12	15	E	FR	1960	45	28.15	0.75	1,700
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undepreciated Value						
EFP	ENCL PORCH	0	35	0	50.79	1,778						
FFL	1ST FLOOR	1,536	1,536	1,536	89.16	136,949						
STG	FRAME SHED BULKHEAD/FRAM	0	50	0	21.35	1,068						
WDK	WOOD DECK	0	78	0	17.10	1,334						
Ttl Gross Liv / Lease Area		1,536	1,699	1,536	141,129							

LAGRANGE DANIEL
45 POOR FARM RD
NOTTINGHAM, NH 03290

DEMERITT DEANNA M &
BEATHAM JOHN E
54 CROSS RD
ROCHESTER, NH 03867-5170

STATE OF NEW HAMPSHIRE
P O BOX 483
CONCORD, NH 00000

MALLET BRIAN A & PEGGY E
4 A PINEKNOLL DR
ROCHESTER, NH 03867-5138

PICKWICK ALISON S & ALLEN C
53 CROSS RD
ROCHESTER, NH 03867-5150

III CORLISS CHARLES L
1 STACY DR
ROCHESTER, NH 03867

VINCENT DIANA M
2 STACY DR
ROCHESTER, NH 03867-5131