



PLANNING & DEVELOPMENT DEPARTMENT

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Planning & Zoning
Community Development
Conservation Commission
Historic District Commission
Arts & Culture Commission

MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF MARCH 13, 2013

(Approved April 10, 2013)

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
Fidae Azouri, Alternate
Robert Goldstein, Alternate
Rose Marie Rogers, Alternate

Member Excused

Pete Meyer

Also present: Kenn Ortmann, Director, Planning & Development Department
Caroline Lewis, Zoning 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 Planning & Development Office for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of February 13, 2013 were reviewed. Mr. Spector 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 following alternates would fill in for excused member, Mr. Meyer. Mr. Goldstein will vote on the first case, and Mr. Azouri on the second case.

New Cases:

2013-07 Application by McGroen Partners, LLC for three variances as follows:

1. A variance under Article 42.9 Section (b)(7) of the City's Zoning Ordinance to permit less parking than required by the ordinance (78 spaces where 102 are required).
2. A variance under Article 42.19 Section (i)(1)(B)(l) of the City's Zoning Ordinance to permit a building to be constructed within the inner 25 ft of the required wetland buffer
3. A variance under Article 42.19 Section (h) of the City's Zoning Ordinance to permit parking in the required 50 ft wetland buffer.

Location: 120-122 Washington Street (Rte 202), Map 123 Lots 65 & 66 Business 1 Zone.

Mr. Art Nickless, Norway Plains Associates, addressed the Board. He advised the Board that Mr. Fenton Groen was here as well. Mr. Nickless stated he has revised plans that incorporate suggestions from the Planning Board and Conservation Commission. He passed out the new plans to the members. He noted the Conservation Commission recommends approval of the variances.

Mr. Nickless reminded the Board members he had been here about a year ago and was granted variances pertaining to the corner lot for less parking and parking in the buffer. Mr. Nickless noted the three variances needed at this time for both lots. He read through the five criteria for the first variance.

Mr. Nickless and the Board members discussed the height of the building (approximately 36 feet), drainage, access on Brock Street, and other issues.

Ms. Rogers stated she felt this is a grievous assault on wetlands that ignores the function of the buffer. She is appalled. Mr. Spector asked how close the retaining wall is to the wetland, and was told the closest location is between 3 and 4 feet.

Mr. Nickless noted the City and State have done work in this area and water has been discharging directly into this brook. They intend to do subsurface drainage on this lot that will preclude any discharge directly into the brook.

Mr. Nickless read through the five criteria for the second and third variance.

The Chair asked if anyone wanted to speak for or against these variances. No one came forward.

The Chair asked for City comments. Mr. Ortmann stated the State dredge and fill permit has not been received yet, and there will be a combination of the two lots.

The Chair closed the public hearing portion of this case and the members worked on three criteria sheets, one for each variance.

Mr. Gates made a motion to grant the variance #1 to allow less parking than required for the following reasons: The variances are not 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 exacerbate the overcrowding of land, if granted, the benefit to this individual applicant outweighs any harm to the community as a whole, and 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. The motion was seconded by Mr. Spector. The motion passed unanimously.

Mr. Gates made a motion to grant the variance # 2 to allow the building in the inner buffer for the following reasons: The variances are not 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 increase congestion in the streets, if granted, the benefit to this individual applicant outweighs any harm to the community as a whole, and 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.

Mr. Gates made a motion to grant the variance #3 to allow parking in the buffer for the following reasons: The variances are not 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 reduce safety from fires, panic and other dangers. if granted, the benefit to this individual applicant outweighs any harm to the community as a whole, and 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. The motion was seconded by Mr. Spector. The motion passed unanimously.

Mr. Ortmann stated that anyone aggrieved by these decisions has 30 days from today to appeal.

2013-08 Application by 17 Glenwood Avenue LLC for the following:

1. A variance under Article 42.16 Table 2 of the City's Zoning Ordinance to permit lot size to be calculated using the square footage minimum required for elderly housing (14 units/ac. or 3,111 sf. per unit) where 6,000 sf. is required, for proposed lots 1 and 2 that are not elderly housing
 2. A special exception under Article 42.23 Section (c)(26) of the City's Zoning Ordinance to permit elderly housing on proposed lot 3 in the Residential 2 Zone.
- Location:** 17 Glenwood Avenue, Map 117 Lot 3 Residential 2 Zone.

Mr. Art Nickless, Norway Plains Associates, addressed the Board. He informed the Board that Mr. David Lemieux, owner of the property was here as well.

Mr. Nickless explained that Mr. Lemieux had purchased the property about 15 months ago, and would like to build elderly housing, which is allowed by special exception in the R2 zone. Mr. Nickless advised the Board members of the wish to subdivide the property into three lots, but to do that the variance would need to be granted as the lots would not meet the current ordinance lot size minimum.

Mr. Nickless and the Board members discussed the number of elderly housing units, how tall they would be, placement on the lot, and other issues.

Mr. Nickless handed out plans that were approved in 1977 showing six buildings that were to be placed on the property. Only two buildings were built.

Mr. Nickless explained the need for the variance in order to divide the property into three lots and discussed the elderly housing proposed. Mr. Nickless read through the five criteria.

The Chair asked if anyone wanted to speak against this case.

Mr. George Pelletier, 111 Wakefield Street, came forward. He stated he isn't against this project, but has some concerns about the elderly housing being changed from elderly to regular housing in the future.

Mr. Ortmann advised Mr. Pelletier that the developer has to enter into a permanent agreement with the City that it will remain elderly housing.

Mr. Michael Vachon, 113 Wakefield Street, noted he is neutral about this project as well, but he is concerned about the increase in traffic.

Mr. Nickless noted traffic patterns are different with elderly, with only 3 to 4 trips a day compared to 10 to 12 for the average household, and the Planning Board will require proper drainage, grading, landscaping, etc.

Mr. Francis Gilman, 5 Glenwood Avenue, said he has been on Glenwood Avenue for 45 years and thinks with more traffic and the road becoming like a race track, single family homeowners will want to move.

Ms. Rebecca Metz, 11 Glenwood Avenue stated that right now she can look back into woods behind her house. She is concerned with emergency vehicles being able to get up Glenwood Avenue, any wetland impact, more congestion on the street, and decreasing property values.

Mr. Nickless said they have not had a wetland scientist out there yet, but have to determine if there are wetlands there, and the area is zoned for multi family so it should not decrease property value.

The Board members and Mr. Nickless discussed the number of buildings, a possible traffic study, the railroad closing the crossing there, the original plan and other issues.

The Chair closed the public hearing portion of this case and asked for member comments.

The issue of 12 versus 24 elderly units was discussed, things that would be the Planning Board's issues, and what issues were clearly Zoning Board of Adjustment jurisdiction.

The City had no comments, but both the City Manager and the Planning Director felt the project has pros and cons.

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 the variance as presented for the following reasons: The variance is not contrary to the public interest because it will not diminish the value of buildings, the spirit of the ordinance is observed because it will not diminish the value of buildings, if granted, the benefit to this individual applicant outweighs any harm to the community as a whole, and the value of surrounding properties will not be diminished because the hours operation are such that impacts from increased levels of noise, light, activity or traffic are not problematic. Mr. Lavallee seconded the motion. The votes were as follows: Voting to approve the motion were Mr. Gates, Mr. Lavallee, Mr. Azouri, and Mr. Torr. Voting against the motion was Mr. Spector. The motion passed.

Mr. Ortmann read through the items in the Zoning Ordinance that relate to elderly housing, and the members reviewed the points relating to special exceptions.

Mr. Gates made a motion to grant the special exception as presented for the following reasons: The specific site is an appropriate location for the proposed use or structure, the proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood, there will not be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking, adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure, the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan, and the special exception meets all criteria under Article 42.23 Section (c)(26) of the City's Zoning Ordinance.

Mr. Lavallee seconded the motion. The votes were as follows: Voting to approve the motion were Mr. Gates, Mr. Lavallee, Mr. Azouri, and Mr. Torr. Voting against the motion was Mr. Spector. The motion passed.

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

Other Business:

Re-verifications

Mr. Goldstein questioned having some kind of re-verification system for elderly housing like the City has to re-verify veteran tax exemptions, etc. Mr. Ortmann stated in the past if an elderly housing complex fails to follow the guidelines, the other tenants have notified the City and the issue is dealt with.

Other City/Town ZBA meetings

Mr. Torr stated he and Mr. Spector want to go to other Zoning Board meetings to see how they handle their cases.

Adjournment:

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

Respectfully submitted,
Caroline Lewis, Zoning Secretary