

City of Rochester Zoning Board of Adjustment

Wednesday January 10, 2024

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on February 14, 2024)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

Michael King

Members Absent

Matthew Winders, excused

Laura Zimmerman, excused

Alternate Members Present

Brylye Collins

Stephen Foster

Staff: Crystal Galloway, *Planner I*

These minutes serve as 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 online at <http://www.rochesternh.gov/> for a limited time for reference purposes.

Chair Larry Spector called the meeting to order at 7:00 p.m.

The recording secretary, Crystal Galloway, conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be Mr. Powers, Mr. Connor, Mr. King, Ms. Collins, and himself.

4. Approval of Minutes:

A motion was made by Mr. Powers and seconded by Mr. King to approve the minutes from the December 13, 2023 meeting. The motion carried unanimously by a voice vote.

5. Continued Cases:

Z-23-48 NM Cook Development, LLC Seeks a *Variance* from Section 12.8 to permit the corner of a proposed building within 50' of a wetland boundary.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Z-23-49 NM Cook Development, LLC Seeks a *Variance* from Section 12.8.B(8) to permit land disturbance within 25' of a wetland boundary.

Location: 0 & 17 Farmington Road, Maps 216 & 221 lots 29 & 164 in the Granite Ridge Development Zone.

The applicant requested a continuance for cases Z-23-48 and Z-23-49 to the February 14, 2024 2023 meeting to allow the Conservation Commission adequate time to review the revised plan.

A motion was made Mr. Powers to suspend Section 7 of the Bylaws and continue cases Z-23-48 and Z-23-49 to the February 14, 2024 meeting as requested. Mr. King seconded. The motion carried unanimously by a voice vote.

Z-23-59 Robert Trott Seeks a *Variance* from Section 23.2.A(20) to permit construction of a shed within the side setback.

Location: 55 Bailey Drive, Map 224 Lot 324-24 in the Residential-1 Zone.

Applicant Robert Trott explained he had presented his application for a variance in November at which time the Board continued it in order to conduct a site visit. He further explained he has moved the proposed shed out of the setback. Mr. Trott went on to explain the shed will be used to house his motorcycle.

Mr. Spector opened the public hearing. There was no one from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

A motion was made Mr. Powers to approve case Z-23-59 based on the discussion from the November meeting and the Boards site visit, stating there is a uniqueness to the property due to the existing right-of-way. Mr. Connor seconded. The motion carried unanimously by a roll call vote.

Z-23-61 Daniel LaGrange Seeks a *Variance* from Table 19- to permit a 2-Lot subdivision where one lot will have less than the required frontage and both lots would have less than the required minimum lot size.

Location: 57 – 59 Cross Road, Map 205 Lot 34 in the Agricultural Zone.

Attorney Brett Allard of Shaughnessy Allard gave a brief overview of the variance request for the Board members who were not present at the December meeting. He explained there was a question regarding the 4k septic area for the lot with the existing duplex. Mr. Allard said they have revised the plan to show the 4k area for both lots.

Mr. Allard went on to speak about the hardship criteria and the fact that this parcel is larger than most in the surrounding neighborhood.

Mr. Spector opened the public hearing. There was no one from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Mr. Powers said based on the discussion during the December meeting he believes all the criteria has been met, including the hardship for the variance.

A motion was made by Mr. Powers to approve case Z-23-61 citing all the criteria has been met. Mr. King seconded. The motion carried unanimously by a roll call vote.

Z-23-62 Corey Foster Seeks a *Variance* from Table 19-A to permit the construction of a deck approximately 4 feet from the property line where a minimum of 10 feet is required.

Location: 24 Vernon Avenue, Map 110 Lot 30 in the Residential-1 Zone.

Applicant Corey Foster explained he is seeking a variance for a deck that encroaches into the side setback. He said the deck has already been built, they had some issues with the contractor who didn't apply for the necessary permits beforehand.

Mr. Foster said the basis for having the deck is because the house is rather small for his large family, and they wanted a large deck that could accommodate the needs of the family.

Mr. Foster read the variance criteria. He said granting the variance would not be contrary to the public interest because it will add positive value to the home as well as surrounding properties and increase the esthetics of the property due to keeping the curb appeal and by additional storage under the deck. The spirit of the ordinance would be observed because the intent is to increase and maintain curb appeal by keeping the lawn equipment, children's toys, and other miscellaneous items stored underneath the deck. Substantial justice would be done because by adding the deck with extra storage it will add value and curb appeal to the home structure and also increase value to the other surrounding properties. The values of the surrounding properties would not be diminished because the deck adds value to the home which increases neighboring home values. Denial of the variance would result in an unnecessary hardship because it will result in clutter of lawn equipment, children's toys, and other miscellaneous items in the driveway and or front lawn due to flooding from the neighbors sump pump in the backyard three-quarters of the year which will decrease curb appeal by parked cars on the side of the street due to items in the driveway space which will also lower property value. The proposed use is a reasonable one because the deck has additional storage underneath which helps keep part of the yard dry due to flooding from sump pump usage which is also why the pool is located in the area above the flooding location. He said he would like the deck to be put in place to accommodate my children and entertain guests due to health reasons from flooding from a sump pump which causes the backyard to flood anywhere from 3 to 5 inches depending on weather and sump pump usage. Mr. Foster said he plans on using the design for the deck to create a dry, clean, and functional outdoor space for his children and future homebuyers.

Mr. Spector asked what the total size of the deck is. Mr. Foster said it is approximately 1,200 square feet.

Mr. King asked if the yard is flooded most of the time. Mr. Foster explained during the spring it is flooded up until about summertime, however last summer it was wet.

Mr. Spector opened the public hearing.

Vera Jacques of 24 Vernon Avenue said the deck had been designed for their children. She said there was a lot of clutter in the yard from children's toys which some of the neighbors didn't like, so the solution was to create storage space under the deck to hide the toys.

Mr. Spector asked if they realized how close they were to the property line when the deck was being constructed. Ms. Jacques explained they had been told they owned four feet past where the existing fence is located.

Ms. Galloway read the following email:

Dear City of Rochester Zoning Board of Adjustment,

We are residents of 23 Vernon Avenue and are writing to express our concerns and disapproval regarding the variance application submitted by our neighbor, Corey Foster for the construction of a deck located just 4 feet from the property line, where a minimum setback of 10 feet is required.

We appreciate the opportunity to provide our comments on this matter and would like to bring to your attention that the deck in question has already been built without obtaining the necessary approvals. This action raises serious questions about the adherence to zoning regulations and undermines the integrity of the process.

Given the importance of maintaining a standard for property setbacks, we firmly believe that approving the variance in this case would set a precedent that may have negative implications for the neighborhood. The

regulations are in place for a reason, and granting a variance after construction has already taken place could encourage others to bypass the proper channels.

Furthermore, the reduced setback poses potential privacy and safety concerns for adjacent properties, including ours. We believe that a 4-foot setback does not adequately address the considerations that led to the establishment of the 10-foot minimum requirement.

In light of these concerns, we kindly request that the Zoning Board carefully consider the implications of granting the variance and seriously consider denying the application. Upholding the zoning regulations is crucial for maintaining the harmony and consistency of our community. Thank you for your attention to this matter, and we trust that the Zoning Board will make a decision that prioritizes the best interest of the community.

Sincerely,

Craig and Jill Reynolds, 23 Vernon Avenue.

Mr. Foster explained he has had conversations with the direct abutting neighbor who asked they have a privacy wall put up. He said that should take care of the privacy issues.

There was no one further from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

The Board deliberated the criteria. Mr. King said he felt the variance would not be contrary to the public interest and feels it meets the spirit of the ordinance. Mr. King went on to say that the flooding issues in the yard creates an unnecessary hardship.

A motion was made Mr. King to approve case Z-23-62 citing all the criteria has been met. Ms. Collins seconded. The motion carried by a 3 to 2 roll call vote. Mr. Connor and Mr. Spector opposed.

6. New Cases:

Z-24-01 Waterstone Rochester, LLC Seeks a *Variance* from Section 8.5.10(a)(1)(a) to allow a 0-foot side setback where 50-feet is required.

Z-24-02 Waterstone Rochester, LLC Seeks a *Variance* from Section 8.5.10(a)(1)(b) to permit a 38-foot rear setback where 100-feet is required.

Z-24-03 Waterstone Rochester, LLC Seeks a *Variance* from Section 8.6 to permit a 0-foot side pavement setback where 5-feet is required.

Location: 120 Marketplace Boulevard, Map 216 Lot 11 in the Granite Ridge Development Zone.

The applicant was not present for the meeting.

A motion was made Mr. Powers to postpone case Z-24-01 thru 03 to the February 14, 2024 meeting to allow the applicant or representative to be present. The motion carried unanimously by a voice vote.

Z-24-04 Raymond Bisson, Stonewall Surveying Seeks a *Variance* from Table 19-A to permit construction of a residential home with a 10-foot front setback where 20-feet is required.

Location: 137 Salmon Falls Road, Map 211 Lot 17 in the Agricultural Zone.

Raymond Bisson of Stonewall Surveying explained the existing lot was created in 1964 and the majority of the parcel is wet. He showed the Board a plan with the location of the proposed house and explained the parcel layout.

Mr. Bisson read through the variance criteria. He said granting the variance would not be contrary to the public interest because the lot was a legal lot of record prior to the zoning ordinance coming into effect, the City has excepted the lot as a building lot by installing a water and sewer connection and has been taxing the lot as a residential lot and there are exceptions for non-conformances. The spirit of the ordinance would be observed because of the exceptions listed for non-conformances. It is understood that the ordinance cannot fully apply to every lot in the City as many lots were created prior to the Zoning Ordinance coming into effect. Substantial justice would be done because without the variance the lot would be unbuildable, and the property value would be diminished. If the variance were granted the abutting property values would not be diminished as the proposed improvements are similar in nature to the existing structures in the area. The existing lot is similar in nature to the abutting properties. There appears to have been fill added to these properties for their improvements to happen. Without the variance being granted more wetland fill than what is proposed would be necessary creating a financial and regulatory hardship.

Mr. King asked if they have received approval from NHDES. Mr. Bisson explained they have not received approval yet because they started with the variance for the reduced setback first.

Mr. Spector opened the public hearing. There was no one from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Ms. Galloway explained this is a legal lot of record which contains wetlands on most of the lot. Staffe feels the variance criteria have been met.

The Board deliberated the criteria. Mr. Powers said he felt the applicant met the criteria based on the application.

Mr. King agreed and added that the applicant is helping to take the proposed house out of the wetlands.

A motion was made by Mr. Powers to approve case Z-24-04 as presented citing all the criteria have been met. Ms. Collins seconded. The motion carried unanimously by a roll call vote.

Z-24-05 Nikolas Moquin & Blake-Mari Watkins Seeks a *Special Exception* from Table 18-A to permit converting the existing in-law apartment into an Accessory Dwelling Unit.

Location: 1 Sunset Drive, Map 127 Lot 3 in the Residential-1 Zone.

Applicants Nikolas Moquin and Blake Watkins explained they are seeking to convert the existing in-law apartment into an accessory dwelling unit to rent out the renovated apartment to a long-term tenant.

Mr. Moquin said the existing unit is approximately 270 square feet, they are proposing to expand the unit to approximately 480 square feet to attract potential renters.

Mr. Moquin read the Special Exception criteria. He said the specific site is an appropriate location the proposed use because per the town ordinance R-1 residential district is permitted for single-family home use with few other allowed uses. Our property is an existing cape residential home with an attached in-law apartment. The existing in-law apartment has separate utilities from the home, including sewage, electric (heat and utility), and a kitchen. All utilities tee off of the home (utility bills are not separate). The proposed use is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the transformation of the existing in-law apartment to an accessory apartment would still be consistent with the spirit of the ordinance. There is suitable parking within the property's driveway for all parties. The intended renters are to be professionals, and respectful to the neighborhood. There is suitable parking within the property driveway for approximately six cars on the paved driveway. The intention for future renters will be professional. Currently the home has two occupants, the owners with two cars. The result of a renter would be three cars in the driveway, only covering half of the driveway, ensuring that normal everyday living on the property is not a nuisance to the neighborhood. Currently the in-law apartment has all of the required utilities to meet the requirements for an accessory apartment within the town ordinance. Per the town ordinance, the R-1 residential district is permitted for single-family home use with few other allowed uses. Per the town ordinance the primary goal of

the residential district is to enhance these older residential areas through sensitive small-scale infill construction, building renovation, redevelopment, and to foster new development in remaining open areas. We believe our intentions are consistent with the primary goal of the residential districts per the town ordinance.

Mr. Spector opened the public hearing. There was no one from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Ms. Galloway said staff feels the applicant has met the special exception criteria.

The Board deliberated the criteria. Mr. Connor clarified that the zone is residential-1 and that the applicant is creating an apartment to make income. Mr. Spector said there is an existing unit, the applicant is proposing to make it larger.

A motion was made by Mr. King to approve case Z-24-05 citing all the criteria has been met. Ms. Collins seconded. The motion failed by a 3 to 2 roll call vote.

Mr. Spector explained the motion failed, therefore the special exception is denied but they can appeal the decision within 30 days.

7. Annual Meeting:

Ms. Galloway opened the nominations.

Mr. King nominated Mr. Spector for Chair, Mr. Connor seconded. A voice vote carried unanimously in favor. Mr. Spector nominated Mr. Powers for Vice Chair, Mr. Connor seconded. A voice vote carried unanimously in favor.

8. Other Business/Non-Scheduled Items:

Ms. Galloway informed the Board that there will be a joint retreat meeting again this year with the Planning Board on Monday January 22nd. She said Stephen Buckley from NH Municipal Association Legal Services Program will be leading the discussion on a variety of topics including public hearings, how to make a motion, when a Board member should recuse themselves, and what the role of an alternate member is.

9. Adjournment:

A motion was made by Mr. Connor and seconded by Mr. Powers to adjourn at 7:49 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development