



City of Rochester, New Hampshire

Building, Zoning & Licensing Dept.
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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF MARCH 8, 2017 (Approved May 10, 2017)

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
Leo Brodeur, Alternate
Shon Stevens, Alternate

Members Absent

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 February 8, 2017 were reviewed. Mr. Gates made a motion to approve the minutes as written. Mr. LaVallee 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 five regular members and the two alternates were present. The five regular members would be voting on the case this evening.

New Cases:

2017-01 Thomas J Demchak, Real Estate Advisors applicant, request a variance to permit commercial boarding and raising of ten (10) horses or other large animals defined as livestock with less than three (3) acres of land. Including sales of farmed raised provisions. Including existing structures and barns. To said terms Article 42.20.b.16, 42.23.b.E, 42.23.b.F

Location: 72 Crown Point Rd., 0235-0050-0000, in the Agricultural Zone

Chair Torr asked who was presenting the case tonight. Ms. Karen Demchak replied and stepped up to the podium to present the case. Chair Torr asked her to state her name for the record. Ms. Demchak stated an overview of her business.

Chair Torr asked if the buildings were also included on the 2.4 acres of land? Ms. Demchak stated yes. Chair Torr asked if the Board members had any questions. Mr. Goldstein stated he had a question for Mr. Devine as he had been out to the property. Mr. Devine stated there was a newly built stable/ tack shop on the property to the left side of the house but it appears to be within the setbacks. There were also two other structures that were built without permits and one appeared to be in the setback. Ms. Demchak stated the property was purchased with these buildings. Mr. Goldstein said he asked the question because there were other factors involved in setbacks like manure, barn and proximity to neighbor. Mr. Spector had questions about the business increasing since she had been there. Ms. Demchak stated yes. Mr. Spector reaffirmed with the Chair that the variance goes with the property and not the applicant. Mr. Gates had no questions.

Chair Torr asked Ms. Demchak to read the five variance criteria for her case.

After Ms. Demchak read her five criteria Chair Torr asked if the board members had questions. There were no additional questions from the members. Chair Torr asked the audience if any were present to speak for or against the case.

Mr. David Rioux approached the podium and read his letter against the case. He also submitted additional pictures to be saved as evidence for the case. Mr. Shon Stevens asked how long Mr. Rioux had been at his residence. Mr. Rioux stated it had been 17 years. Mr. Stevens also asked if Mr. Rioux had his well tested. Mr. Rioux had it recently tested but it had no ecoli. Mr. Rioux read his complaint letter into record. Chair Torr asked if there was anyone else to speak on the case. Mr. Dave Laroque an abutter, approached the podium to speak. He stated his reason he was not in favor of the case. He researched two overviews of the property and was concerned of overcrowding of the animals.

Chair Torr asked if anyone else would like to speak in opposition of the case.

Ms. Virginia Lamontagne approached the podium to speak against the case. Her concern was the overcrowding of the animals. She also stated Ms. Demchak has to cross her property to ride the horses without permission from Ms. Lamontagne.

Chair Torr asked if anyone was present to speak in favor of the case.

Ms. Cheryl Robinson of 174 Crown Point Rd approached the podium to speak in favor of Ms. Demchak integrity and business. Ms. Robinson questioned Mr. Rioux about time lapse of the pictures he had submitted because they were not all current.

Mr. Goldstein asked Ms. Robinson about her horses and how many acres she had. She has over five acres.

Mr. Devine read an e-mail into record from Terri Hensel of 73 Crown Point Rd.

The Chair asked for the City view.

Mr. Devine read the following letter in record:

1. *The proposed use would not diminish surrounding property values:* Property values could be affected by a working farm with livestock located next to single family houses.
2. *Granting the variance is not contrary to public interest because:* Granting this variance is contrary to public interest. It alters the character of the neighborhood by having horses and other livestock animals in close proximity to residence. It can affect the neighbors by the smell, noise, and the animal waste.
3. *Denial of the variance would result in unnecessary hardship to the owner because:* The applicant failed to provide any hardships as required by the application. It does not state any special circumstances that make the property unique.
4. *Granting the variance would do substantial justice because:* If the board granted the variance substantial justice would be done to the applicant but an injustice would be done to the abutters.
5. *The use is not contrary to the spirit of the ordinance because:* It does alter the neighborhood which is contrary to the ordinance. There are single family residences surrounding the property thus threatens the character of the neighborhood.

The staff recommends the board deny this variance because the applicant failed to meet the requirements set forth in NH RSA 674:33 I (b). The City Manager had no comment.

Mr. Spector has nothing against horses as his son has them but he said there was not enough acreage for the horses Ms. Demchak has. Mr. Goldstein stated there was not enough setback for the manure. Mr. Lavalley had no comment. Mr. Gates agrees with Mr. Devine.

The Chair closed the public hearing portion of the meeting and the board worked on the criteria sheets.

Chair asked who was making a motion. Mr Spector motioned to deny the variance as presented for the following reasons; The variance will not be contrary to the public interest because: It will negatively impact health and the general welfare. It will exacerbate the overcrowding of the land. It will diminish the value of buildings. The spirit of the ordinance is not observed because: It will exacerbate the overcrowding of land. It will diminish the value of buildings. Substantial justice is done because: If denied, the benefit to the community as a whole outweighs any disadvantage or harm to this individual applicant. The value of surrounding properties will be diminished because: It will be visible from the street.

Mr. Gates and Mr. Goldstein seconded the motion. The motion passed unanimously by the five regular voting members.

Mr. Devine stated the motion was denied and anyone directly affected by this decision has thirty days from today to appeal.

Mr. Spector asked if they would keep getting paperwork for the Toy case, and what was the court date for the hearing. Mr. Gates stated the court date was May 8, 2017.

Chair Torr asked if there were any other questions.

Adjournment:

Mr. Spector motioned to close the meeting. It was seconded by Mr. Gates.

The motion passed unanimously by roll call vote.

The meeting adjourned at 7:23 pm.

Respectfully submitted,

Karen L Grenier

Karen L. Grenier, Building, Zoning & Licensing Secretary