



City of Rochester, New Hampshire

Building, Zoning & Licensing Dept.

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MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING OF OCTOBER 11, 2017

The Vice Chair called the meeting to order at 7:00 p.m. in the Council Chambers.

Roll Call:

The Zoning Secretary conducted the roll call.

Members Present

Lawrence Spector, Vice Chair

Randy Lavallee

Robert Gates

Robert Goldstein

Shon Stevens, Alternate

Leo Brodeur, Alternate

Members Excused

Ralph Torr, Chair

Also present: Joe Devine, Compliance Officer Building, Zoning and Licensing Services
Julia Libby, Secretary of Building, Zoning, and Licensing Services

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 and online at www.rochesternh.net for a limited time for reference purposes. It may be copied for a fee.

Approval of Minutes:

The minutes of September 13, 2017 were reviewed, Mr. Goldstein made a motion to accept the minutes, Mr. Lavallee seconded the motion. The motion passed unanimously by roll call vote.

The Vice Chair asked if any of the board members had any conflict with tonight's case. There were no conflicts.

New Cases:

Mr. Spector stated that Mr. Brodner would be voting as well as the other four regular board members for the first case.

2017-10 Roberta Fenton, applicant for a Special Exception to permit an accessory apartment in the Residential 1 zone, according to Article 42 table 18-A.

Location: 2 Rochester Ave. Rochester, NH 03867, 0109-0019-0000, in the R1 Zone.

Roberta Fenton approached the podium and informed the board of her application.

Vice Chair Spector asked the board members if they had any questions. No one had any.

Mr. Devine gave the city's opinion that as long as the unit is less than 800 square feet, there is no reason the application should be denied. Mr. Brodner asked the size of the unit.

Mr. Spector asked the applicant to read the criteria for the record, she did.

Mr. Spector asked if there was anyone in the audience to speak against the case. No one came forward. He asked if there was anyone in the audience to speak for the case. No one came forward.

Mr. Stevens asked if this was an already existing space, and Roberta responded that they had just bought the house and the previous owner had begun improvements but it had not been finished or rented out to her knowledge.

Mr. Spector asked for a motion. Mr. Gates motioned to grant the special exception as presented, Mr. Lavallee seconded. The motion carried unanimously.

Mr. Lavallee seconded the motion. The motion carried unanimously.

Mr. Devine advised that anyone aggrieved by this decision has 30 calendar days to appeal.

2017-11 Kevin R. & Stephanie Burke applicants, a Variance to permit a horse to be kept on 2 acres of land in the agricultural zone. According to said terms Article 42.23, Section b.3.E.iii.

Location: 313 Blackwater Rd. Rochester, NH 03867, 0264-0037-0000, in the Agricultural Zone.

Mr. Spector stated that voting members would be the four regular, and that Mr. Stevens would vote.

Ray Bisson approached the podium in representation of applicants Kevin and Stephanie Burke. He informed the board in detail of the application and criteria they felt they met.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case, applicant Kevin Burke came forward and briefed the Board on why they should receive the Variance.

Vice Chair Spector asked the Board if they had any questions, they did not. Mr. Devine then gave the city's opinion; he said that they feel that one, it's apparent that the application will not diminish the surrounding property values, two, the variance is not contrary to the public interest, three, while they don't disagree with the applicant's claim for a hardship, this should be a request for a zoning change and not a request for a variance this is essentially creating a self-created hardship and therefore not a true hardship when deciding whether or not to grant this variance, four, granting the variance would cause substantial justice, and the request is contrary to the ordinance because the goal of the agricultural zone is to create and preserve open space which is why they require more acreage. He said because the applicant failed to prove a true hardship and the request is contrary to the spirit of the ordinance they feel you must deny the request.

Vice Chair Spector closed the public hearing portion of the meeting and the board worked on their variance criteria sheets.

Mr. Spector asked for a motion. Mr. Lavallee motioned to grant the variance for the following reasons: The variance will not be contrary to the public interest because it will not change the character of the district. The spirit of the ordinance is observed because it will not change the character of the district. If granted, the benefit to this individual applicant outweighs any harm to the community as a whole. The value of the surrounding properties will not be diminished because it will not be visible from abutting properties.

Mr. Goldstein seconded the motion. The motion carried with a three to two vote.

Mr. Devine advised that anyone aggrieved by this decision has 30 calendar days to appeal.

2017-13 Corey MacKoul, applicant for a Special Exception to permit a home occupation 3 in the Residential 2 zone, according to Article 42 table 18-A.

Location: 147 Wakefield Street Rochester, NH 03867, 0113-0055-0000, in the R2 Zone.

Peggy Lynch approached the podium in representation of Corey MacKoul, and briefed the Board on their application.

Mr. Spector asked if anyone was present to speak in favor of the case, no one came forward. Mr. Spector asked if there was anyone present to speak against the case. No one came forward.

Mr. Spector asked the board if they had any questions, they did not.

Mr. Devine was asked for the city's opinion, he said per chapter 42.24.1, home occupations shall be conducted by the individual on the property in which he or she resides. This business is not being

conducted by the individual who resides at the property, but by the sister of the owner. Two, granting the special exception would be essentially changing the building to commercial rather than residential. The entire lower level would now be used for commercial space, and according to chapter 42.24.3 the business activity must be subordinate to the residential use. Three, it is the opinion of the City Attorney that our Zoning Ordinance only contemplates one home occupation per a residential property. Granting the special exception goes against what our zoning ordinance is trying to accomplish if we allow two home occupations in a residential building. BZLS still feels this is a good example of a zoning change and not a request for a special exception. The city manager said the case is a good example for a change to the Zoning Ordinance. It is a good use for the area, the Zoning law should be revised to allow this use.

There was then some discussion about who was conducting the business.

Mr. Spector asked for a motion. Mr. Gates moved that special exception be granted for the reasons stipulated by the applicant, Mr. Lavallee seconded. The motion was denied by a four to one vote.

Mr. Devine advised that anyone aggrieved by this decision has 30 calendar days to appeal.

Other Business:

Adjournment:

Vice Chair Spector asked for a motion to adjourn. Mr. Brodeur motioned to adjourn the meeting, Mr. Lavallee seconded. The motion carried unanimously.

The meeting adjourned at 7:40 pm.

Respectfully submitted,

Julia Libby

Julia Libby, Secretary of Building, Zoning, and Licensing Services