



# City of Rochester, New Hampshire

## Zoning Board of Adjustment

### MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING HELD ON JUNE 12, 2019

The 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  
Robert Gates  
Shon Stevens  
Leo Brodeur, Alternate

#### **Members Excused**

Robert Goldstein  
Randy Lavallee

Also present: Julia Libby, Secretary of Building, Zoning, and Licensing Services  
Jim Grant, Director for Building, Zoning, and Licensing Services

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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 neither is intended nor is it represented that this is a full transcription. A recording of the meeting is on file online at [www.rochesternh.net](http://www.rochesternh.net) for a limited time for reference purposes.

#### **Approval of Minutes:**

The minutes of April 10, 2019 were reviewed; Mr. Brodeur made a motion to accept the minutes, Mr. Gates seconded the motion. The motion passed unanimously by a voice vote.

#### **Seating of Alternates:**

Chair Spector asked if any of the members had a conflict. Mr. Brodeur had a conflict with case numbers 2019-06/07.

#### **Postponed Cases:**

**Z-19-10** Mark Phillips applicant seeks an *Equitable Waiver* to the terms of RSA 674:33-a to waive the terms of Article 42, Table 19-A to permit construction of a three bedroom home on the lot on which there presently exists a garage.

**Location:** 106 England Road, Rochester, NH 03867, MLB 0263-0010-0000 in the Agricultural Zone.

Attorney Donald Whittum approached the podium in representation of the applicant. He informed the Board of why they are applying for an equitable waiver and reviewed the criteria they felt they met to be granted the waiver.

The Chair asked the audience if there was anyone present to speak for or against the application and no one came forward.

Chair Spector asked for the City's opinion. Mr. Grant stated that the application does not meet any of the criteria for an equitable waiver under RSA 674:73-a, the property does not currently violate any provisions of the City Zoning Ordinance. The deed error also does not violate the Ordinance and can be remedied without an equitable waiver. As such, we recommend that you deny the application.

The applicant's representative disagreed with the City's position and cited a case law that agrees with what the applicant is applying to do.

Mr. Gates asked Mr. Grant to explain again, Mr. Grant explained that the City's approval and record of the lot in question meets the requirements of the City's Zoning Ordinance therefor as far as the City is concerned; they do not need an equitable waiver. He said that the error they are trying to fix is something the City feels they need to correct through a civil case.

Mr. Gates made a motion to deny the request for an equitable waiver based on the City's articulation, Mr. Brodeur seconded and the motion carried with a unanimous roll call vote.

Mr. Grant advised that anyone directly affected by the decision have the right to appeal within 30 calendar days.

#### **Motion to Rehear:**

**2019-07** One80 Solar, LLC, applicant seeks a *Variance* from table 18-D of the City Zoning Ordinance to permit a photovoltaic power station for the generation and distribution of electricity in the Agricultural zone.

**Location:** 68 Flagg Road, Rochester, NH 03867, MLB 0262-0058-0000 in the Agricultural Zone.

**2019-06** One80 Solar, LLC, applicant seeks a *Variance* from table 19-A of the City Zoning Ordinance to permit a subdivision of the parcel that creates two lots in which neither have the minimum 150' of frontage required in the Agricultural zoning district.

**Location:** 68 Flagg Road, Rochester, NH 03867, MLB 0262-0058-0000 in the Agricultural Zone.

Liz Nolin approached the podium in representation of the applicants and requested to postpone the case until the next regularly scheduled meeting for July 10<sup>th</sup>.

#### **New Cases:**

**Z-19-11** Krzysztof Kozlowski applicant seeks a *Variance* from table 19-A of the City Zoning Ordinance to permit a duplex on a lot that is 6,098 square feet where 9,000 square feet is required.

**Location:** 7 Academy Street, Rochester, NH 03867, MLB 0125-0099-0000 in the R2 Zone.

The applicant postponed their case until next month.

**Z-19-12** The Granite YMCA applicant seeks a *Special Exception* as provided in section 22(a)(8) of the Zoning Ordinance to permit the expansion of a child care program.

**Location:** 35 Industrial Way, Rochester, NH 03867, MLB 0230-0021-0000 in the Industrial Zone.

Laura Prisco approached the podium and introduced herself to the Board. She explained that the daycare is looking to expand the amount of children they care for during the day. Ms. Prisco reviewed the criteria for the special exception.

Chair Spector asked the members if they had any questions. Mr. Stevens clarified with the applicant how many children they would be approved for if they were to be granted the exception, which was 153.

There was no one present to speak for or against the application.

Once asked for the City's opinion, Mr. Grant recommended the special exception be approved based on the reasons provided in the application.

Mr. Stevens made a motion to approved the special exception based on the City's findings, Mr. Gates seconded the motion and it carried with a unanimous roll call vote.

Mr. Grant advised that anyone affected directly by the decision has the right to appeal within 30 calendar days.

**Z-19-16** SFC RC Funding, LLC applicant seeks a *Variance* from 30(c)(1) of the Zoning ordinance to permit the expansion of a building on an established nonconforming property.

**Location:** 152 Highland St, Rochester, NH 03867, MLB 0106-0056-0000 in the R1 Zone.

Attorney Josh Lanzetta approached the podium and introduced himself to the Board. He familiarized the Board with the property and why the applicants are seeking a variance. Mr. Lanzetta continued to review the application and criteria for the variance.

Mr. Brodeur asked that if they are taking away one or more parking spaces, how many parking spaces would they need to accommodate the addition and any additional employees it may come with.

Mr. Lanzetta assured the Board that the space that would be taken up is actually currently being used for a mulch bed, condenser, and what might be a mini split unit.

There was no one present to speak for or against the application.

Once asked for the City's opinion, Mr. Grant stated that the application should approved based on the finding of facts contained within the application. Specifically, a special condition exists on the property that distinguishes it from surrounding properties, including the existing building's proximity to the state highway and the State's right of way.

Mr. Gates motioned to grant the variance because it is not contrary to the public interest, based on the reasons contained in the application. Mr. Brodeur seconded the motion and it carried with a unanimous voice vote.

Mr. Gates motioned to grant the variance because it is not contrary to the spirit of the ordinance based on the reasons contained in the application. Mr. Brodeur seconded and the motion carried with a unanimous voice vote.

Mr. Gates motioned to grant the variance because it will result in substantial justice based on the applicant's articulation, Mr. Brodeur seconded and the motion passed with a unanimous voice vote.

Mr. Gates motioned to grant the variance because it will not diminish the value of surrounding property based on the applicant's articulation, Mr. Brodeur seconded and the motion passed with a unanimous voice vote.

Mr. Gates motioned to grant the variance because enforcement of the ordinance would result in an unnecessary hardship based on the applicant's articulation, Mr. Stevens seconded and the motion passed with a unanimous voice vote.

Mr. Grant advised that anyone directly affected by the decision has the right to appeal within 30 calendar days.

**Z-19-17** Christopher and Renee McMaster applicants seek a *Special Exception* as provided in section 26(c)(2) of the Zoning Ordinance to permit the storing of a commercial food truck on private property in a residential district.

**Location:** 5 Hussey St, Rochester, NH 03867, MLB 0116-0037-0000 in the R1 Zone.

Colby Gamster an attorney from Portsmouth approached the podium and introduced himself to the Board. He briefed them of the applicant's need for the special exception and guided them through the application showing and telling the Board how they felt they have met all of the criteria required for the special exception.

The Board did not have any questions for the applicants. Chair Spector asked the audience if there was anyone to speak for or against the application.

Mellisa Vaughan of 6 Hussey St. came forward and spoke in support of the applicants on behalf of the whole neighborhood.

Mr. Grant said that the City feels the special exception should be granted for the reasons set forth in the application.

Mr. Gates made a motion to grant the special exception with the stipulation that it would be one truck only, Mr. Stevens seconded and the motion passed with a unanimous voice vote.

Mr. Grant advised that anyone affected directly by the decision has the right to appeal within 30 calendar days from today.

**Other Business:**

There was no other business.

**Adjournment:**

Mr. Stevens moved to adjourn the meeting, Mr. Gates seconded and the motion carried unanimously.  
The meeting adjourned at 7:57pm.

Respectfully Submitted,

*Julia Libby*

Julia Libby

Secretary for Building, Zoning, and Licensing Services