



City of Rochester, New Hampshire

Zoning Board of Adjustment

MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING HELD ON JULY 10, 2019

The Chair called the meeting to order at 7:04 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

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 for a limited time for reference purposes.

Approval of Minutes:

The minutes of June 12, 2019 were reviewed; Mr. Gates made a motion to accept the minutes, Mr. Brodeur 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.

Mr. Grant advised the audience that there were only four voting members present at the meeting. He let them know that it is still a quorum but the chance of securing the three needed votes is one less than if the entire board was present. He let them know that if any of the applicants wanted to come forward to postpone their application until the following month they could.

Z-19-13 Thomas Demchak applicant seeks a Variance from section 20.2(P)(1,2,&3) of the Zoning Ordinance to permit a commercial stable where none of the following requirements will be met:

- i. 1. The minimum lot size required shall be 5 acres.
- ii. 2. The side and rear setbacks for structures housing horses shall be 100 feet from any property line.
- iii. 3. Any storage areas for manure shall be set back at least 200 feet from any lot lines. Manure must be handled according to best management practices.

Location: 72 Crown Point Rd, Rochester, NH 03867, MLB 0235-0050-0000 in the Agricultural Zone.

Z-19-14 Thomas Demchak applicant seeks a Variance from section 23.2(A)(3)(E) of the Zoning Ordinance to permit the keeping of less than ten horses as an accessory use to a residence where the following requirements will not be met:

- iv. The activity is not carried out as a business;
- v. A lot in the AG District is at least 3 gross acres;
- vi. A lot in all other districts is at least 2 gross acres;
- vii. There is an additional $\frac{1}{4}$ acre of land beyond the minimum specified in iii. and iv, above, for each animal kept beyond the first one;
- viii. No area or structure for the housing, stabling, storage of manure/animal waste, or feeding of animals shall be located within 100 feet of any property line;
- ix. Handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors;
- x. No animals shall be pastured within 25 feet of any side or rear property line except where the abutting property owner consents to a reduced setback.

Location: 72 Crown Point Rd, Rochester, NH 03867, MLB 0235-0050-0000 in the Agricultural Zone.

Z-19-15 Thomas Demchak applicant seeks a *Variance* from section 23(b)(E) of the Zoning Ordinance. The section does not exist and we have not heard from the representative regarding the clarification of this.

Location: 72 Crown Point Rd, Rochester, NH 03867, MLB 0235-0050-0000 in the Agricultural Zone.

Attorney Scott Hogan approached the podium and introduced himself. He informed the Board that he and his applicants wish to postpone their application until the August meeting.

Mr. Gates made a motion to grant the postponement until the August 14th meeting, Mr. Stevens seconded and the motion carried unanimously by a voice vote.

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.

Attorney Liz Nolin approached the podium and introduced herself and her clients. She informed the board that they would like to go forward with the motion to rehear knowing they only had three voting members. She clarified which case the motion for rehearing would be for and that they would move forward with the second variance application should the motion to rehear be granted.

Mr. Grant let her know that as point of order the discussion for a motion to rehear is among the Board members only.

Chair Spector asked the Board if there was any discussion regarding the application, and there was none.

Mr. Gates motioned to deny the motion for rehearing regarding case number 2019-07, Mr. Stevens seconded and the motion carried with a unanimous voice vote.

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

Attorney Nolin asked if the Board had no tolerance for input on a motion to rehear. Mr. Grant let her know that the decision is made based upon what is submitted in the application. There was discussion regarding the matter and the attorney requested a motion for reconsideration.

Chair Spector denied the rehearing again.

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.

Krzysztof Kozlowski approached the podium and introduced himself to the Board. He reviewed his application, the five variance criteria, and some problems that he is having currently at the property that he feels would be fixed by adding and occupying an additional unit.

Chair Spector asked the Board if they had any questions, they did not. He asked for the City's opinion, Mr. Grant stated that unfortunately, the applicant failed to meet the hardship criteria of RSA 674:33I(b)(2). There are no special conditions of the property that distinguish it from other properties in the area.

There was some discussion between the Board and the applicant.

Mr. Gates made a motion to deny the variance based on the hardship requirement, because there are no special conditions of the property that distinguish it from surrounding properties. Mr. Stevens seconded and it carried with a unanimous roll call vote.

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

Chair Spector advised the audience that was present for case numbers Z-19-13, 14, and 15 that no one would be able to speak regarding the case because they did not open it as the applicants requested a postponement.

Two frustrated abutters approached the podium and expressed their concerns regarding the extension of the application.

Z-19-18 Ronald Dubois applicant seeks a *Variance* from table 19-A of the Zoning Ordinance to permit a storage shed that encroaches on the 10' setback requirement.

Location: 1 Adelia St, Rochester, NH 03867, MLB 0122-0022-0000 in the R1 Zone

Ronald Dubois approached the podium and introduced himself to the Board. He reviewed his situation and the five criteria he felt he met for the variance.

Chair Spector asked if there was anyone in the audience to speak for or against the case. An abutter that lives next to the applicant approached the podium and stated that he does not see any reason for them to not be allowed to place the new shed where it is proposed.

Mr. Stevens asked if it would be a temporary or permanent structure. The applicant stated that it would be on concrete blocks.

Chair Spector asked for the city's opinion. Mr. Grant stated that the applicant has shown there will be no harm to the public interest, it is not contrary to the spirit of the ordinance, because the existing fence provides the protections contemplated by the setback requirements, granting the variance will result in substantial justice because minimum or no gain to public would be realized by denying the variance, it will not diminish the value of the surrounding property because it will not change the character of the neighborhood in any way, and an unnecessary hardship exists because of the lots small size, the presence of the 20 by 40 pool, and the existing 6' fence.

Mr. Gates made a motion to grant the variance based on criteria #1, because the applicant has shown there would be no harm to the public interest, Mr. Stevens seconded and the motion carried with a unanimous voice vote.

Mr. Gates made a motion to grant the variance because it is not contrary to the spirit of the ordinance based on the city's findings, Mr. Brodeur seconded and the motion carried by a unanimous voice vote.

Mr. Gates made a motion that granting the variance would result in substantial justice based on the city's findings, Mr. Brodeur seconded and the motion carried by a unanimous voice vote.

Mr. Gates made a motion to grant the variance because it will not diminish the value of surrounding properties based on the city's findings, Mr. Brodeur seconded and the motion carried by a unanimous voice vote.

Mr. Gates made a motion to grant the variance because it would result in an unnecessary hardship based on the city's findings, Mr. Brodeur seconded and the motion carried by a unanimous voice vote.

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

Z-19-19 Waste Management of NH applicant seeks a *Variance* from table 18-D of the Zoning Ordinance to permit and continue a use defined as a "truck terminal" in the agricultural zone.

Location: 214 Rochester Neck Rd, Rochester, NH 03867, MLB 0268-0002-0000 in the Agricultural Zone

Chair Spector stated into the record that case Z-19-19 is being postponed until next month.

Other Business:

Mr. Grant let the Board know that the amendment to RSA 676:7, II just means that we have to hold a hearing on an application within 45 days of the application instead of the previous 30 day requirement.

Adjournment:

Mr. Gates moved to adjourn the meeting, Mr. Brodeur 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