



City of Rochester, New Hampshire

Zoning Board of Adjustment

MINUTES OF THE ROCHESTER ZONING BOARD OF ADJUSTMENT MEETING HELD ON MARCH 11, 2020

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

Robert Gates – Vice Chair
Paul Giuliano, Alternate
Taylor Poro, Alternate
Sue DeLemus, Alternate

Members Excused

Lawrence Spector - Chair
Leo Brodeur

Members Unexcused

Shon Stevens
Terry Garland, Alternate

Also present: Terence O'Rourke, City Attorney
Rob Lynch, Code Compliance Officer for Building, Zoning and Licensing
Dee Mondou, Secretary for Building, Zoning, and Licensing

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 March 11, 2020 were reviewed; Mr. Giuliano made a motion to accept the minutes. Vote was taken and carried unanimously by a voice vote.

Seating of Alternates:

Vice Chair Gates said since there are only four members present, all will be voting tonight.

Vice Chair Gates asks if any member of the Board has any conflict of interest with any of the cases on the agenda this evening. He gives examples of financial remuneration, relationships, business relationships etc. No board member states any conflicts.

New Cases:

Z-20-04 Matt Pelletier applicant seeks *Special Exception* from Table 18D of the Zoning Ordinance to permit a gas utility substation in the NMU Zone.

Location: 770 Columbus Ave, Rochester NH 03867, MLB 137-0003-0000 in the NMU Zone

Matt Pelletier introduces himself. Says he works for Process Pipeline Services which is an engineering consulting firm. He is working with Unitil on this project. He briefed the board about the case and why it needed a special exception.

Vice Chair Gates asks if there is anyone in the audience that wants to speak in opposition to this applicant's request. No one comes forward.

He asks if there is anyone in the audience that wants to speak in favor of this applicant's request. No one comes forward.

Matt Pelletier speaks again giving additional information.

Vice Chair Gates asked for the City's opinion. Mr. Lynch stated after reviewing the appropriateness of this special exception we concluded the following fact. City recommends approval of application for the reasons and facts stated in the application.

Vice Chair Gates closed public hearing and asked if the board had any questions or comments before voting.

Mr. Giuliano motioned to grant the Special Exception based on the reasons and facts stated in the application. Ms. DeLemus seconded and the motion carried with a unanimous voice vote.

Mr. Lynch advised that any person affected directly by the decision has the right to appeal within 30 days from today.

Postponed Cases:

Z-19-13 Thomas Demchak applicant seeks a Variance from section 20.2(q) of the Zoning Ordinance to permit a commercial stable where none of the following requirements will be met

- i. The minimum lot size required shall be 5 acres.
- ii. The side and rear setbacks for structures housing horses shall be 100 feet from any property line.
- iii. 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 the horses as an accessory use to a residence, not carried out as a business, where the following requirements will not be met:

- i. A lot in the AG District is at least 3 gross acres;
- ii. A lot in all other districts is at least 2 gross acres;
- iii. There is an additional ¼ acre of land beyond the minimum specified in iii. and iv, above, for each animal kept beyond the first one;
- iv. 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;
- v. Handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors;
- vi. 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 23.2(a)(3)(e) of the Zoning Ordinance to permit the keeping of the horses as an accessory use to a residence where the following requirements will not be met:

- i. The activity is not carried out as a business;
- ii. A lot in the AG District is at least 3 gross acres;
- iii. A lot in all other districts is at least 2 gross acres; 11
- iv. There is an additional ¼ acre of land beyond the minimum specified in iii. and iv, above, for each animal kept beyond the first one;
- v. 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;
- vi. Handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors;
- vii. 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.

Scott Hogan, land use attorney introduces himself as representative for Thomas Demchak owner and Karen Demchak who resides on the property. He states that they have 3 Variances before the board tonight and it would be more efficient to discuss them all at the same time by way of introduction. He says Karen Demchak has lived there for over 10 years and conducted agricultural primarily equestrian activity on the property. She raises and breeds horses and people come to her for other equestrian services. He talks about the previous delays and postponements and says he is fine with the 4 member board tonight.

He describes the property as 2.3 acres, long and narrow with elevations and a stream at the bottom, he makes a requests for the board members to come out to view the property for themselves. He reviews the lists of supporting letters submitted with the application. Talks about the choice of it being a residential accessory use or commercial boarding facility. He discusses a NH state law that he feels gives it a different context and these uses can't be prohibited with the imposition of local zoning RSA 674.32c. Says they have interacted with local, state and federal resources, met with department of agriculture, NCRS, environmental services, and hired a private consulting engineer. They have applied for a grant for manure management, says there has been an improvement in the conditions. He discusses the 5 criteria for a Variance with the manure going into the stream and threatening the water any potential impact would go to the undeveloped wetlands on the opposite side of the residential abutters stating there is no evidence of public health safety. He reiterates that she has had a business on this property for over a decade, sometimes she breeds horses in the spring, and boards horses, but no more than 10 horses for short periods of time.

Vice Chair Gates asks if there is anyone in the audience that would like to speak in favor of the applicant's request.

Thomas Demchak, owner of the property comes to the podium and talks about how this is for the city with all the things she does.

Keith Tendyk who lives 3 or 4 houses down from her approaches the podium and says he allows her to walk the horses on his property as well as dispose of manure.

Vice Chair Gates asks if there is anyone in the audience that wishes to speak in opposition to the applicant's request

Terence O'Rourke, City Attorney comes to the podium and speaks on behalf of the City Manager's Office and in support of the recommendations made by City staff, he recommends to deny these Variance applications saying they fail on all five criteria, he reminds all that if you fail even one of the criteria then the whole application fails. He speaks to an accessory use and it would require at least 3 acres for 1 horse with an additional ¼ acre needed for each additional animal, their lot is 2.14 acres and does not even have enough land for 1 horse, 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, which they are, handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors, complaints come from prior and current neighbors, 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, abutting property owner does not consent. He addresses the use as a commercial business and that it would require a minimum of 5 acres, which they do not have. He reiterates that granting these Variances would go against the ordinance, that they have no case to prove a land hardship and that they have admitted they are operating as a business in which case they would be asking for a retroactive Variance.

Terry Hensel comes to the podium to speak as an abutter regarding the smell of manure and what that does to the surrounding abutters.

Penny Percey comes to the podium to speak as a direct abutter. She shares her concerns and complaints since she bought the property, she talks about the police reports filed, says she can't enjoy her property due to the flies, smell and sight of manure since the horses come right up to the property line. Says she is the one who called the Department of Agriculture and filed the complaint and that she was told that the Demchaks refused to let them on her property for 2 months to inspect it and refused any of their help. She says her property is exactly like theirs. Both 2 acres, long and narrow with a slope in the back, a stream and a hill on the other side, disagrees that their property is unique. Shares her concerns about the manure that leaches down to the stream and polluting it causing a hazard to her, the City of Rochester and a pond on another neighbor's property. Department of Health has been out several times and taken water samples. Says when she bought the property that the Demchaks property was vacant. Shortly after Karen moved back and brought the horses, says she is now unable to sell her house due to all the manure visible from her property. Because they have already been denied once and there are no significant changes she asks that this Variance be denied tonight.

Vice Chair Gates asks if there is any others that wish to speak against. When there is not he says the applicant may speak again.

Thomas Demchak comes back up to the podium talks about the property values and they have all gone up in the area. Talks about the neighbor continually videoing the activity and that he has spoke to the police regarding this.

Karen Demchak comes to the podium, she talks about the skills she brings to the agricultural zone and to the area, that she breeds a particular type of horse which is rare and about her background with horses. She says she has had horses since she moved in. She has applied for a grant for manure bin. Says she has been working with the Dept of Agricultural to add buffers. Says she has never denied them a visit to her property. She denies the property ever being vacant, says she took the horses to New York for 6 months to hay a piece of land then brought them back.

Ms. Delemus asks how long ago it was that she moved in. Karen Demchak says 2005. Ms. Delemus asks if she would consider her facility a boarding facility. Karen Demchak says she only takes them in for a short period of time, only boards one at a time and only once a month.

Scott Hogan approaches the podium and reminds the board that they are able to require special conditions of approval to have the long standing agriculture use to continue.

Vice Chair Gates asks for the City's response

Mr Lynch advised that after reviewing the appropriateness of this variance we concluded the following fact:

- 1) The application is against the public interest and violates the spirit of the ordinance. The harm sought to be prevented by the zoning ordinance provisions from what the applicant seeks to vary are the fact being visited upon the abutting properties as the applicant is currently operating in violation of their provisions.
- 2) The application fails to meet the hardship criteria of RSA 674:33-1(b)(2). There are no special conditions of the property which distinguish it from other properties in the area.

Vice Chair Gates closes the public hearing and asks for input from the board

Mr. Giuliano says we've heard a lot about the ability, services and character of the applicant but that does not factor into the decisions of the board. He asks if there has been any substantial new development since the last decision of this board. Vice Chair Gates says not that he's aware of. Ms. Delemus points out that Ms. Demchak has applied for a grant for a manure containment, arrangements with a neighbor to bring manure to his property, says she went to the property and that it looks wonderful. Says she has a horse and talks about how familiar she is with them, that she boards her horse on a property that is less than an acre. She gives the suggestion of putting a fence up so her neighbor does not have to see the manure. Mr. Giuliano asks how many horses are on the property and reviews that a property needs minimum of 3 acres for 1 horse and a ¼ acre more for each additional.

Vice Chair Gates asks if anyone wants to make a motion.

Ms. Delemus makes a motion to grant the Variance. No second to the motion.

Mr. Giuliano makes a motion to deny which is seconded by Vice Chair Gates.

Mr. Giuliano reviews each of the 5 criteria stating that they have not been met. A roll call is taken for each of the 5 criteria and the Variance is denied 3 votes to 1 on each.

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

Other Business:

Election of Chair and Vice Chair – Vice Chair Gates motions to postpone until all regular members are present. Mr. Giuliano seconds motion. Motion carried unanimously.

Adjournment:

Vice Chair Gates motioned to adjourn the meeting. It was seconded by Mr. Giuliano and the motion carried unanimously.

The meeting adjourned at 9:24 pm.

For full discussion go to <https://rochesternh.viebit.com/player.php?hash=qPXTe4VDDNLo>

Respectfully Submitted,

Dee Mondou

Dee Mondou Secretary for
Building, Zoning, and Licensing Services