

# City of Rochester Zoning Board of Adjustment

Wednesday June 8, 2022

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on July 13, 2022)*

## Members Present

Larry Spector, *Chair*  
Leo Brodeur, *Vice Chair*  
James Hayden  
Michael King

## Members Absent

Lance Powers, excused  
Matthew Winders, excused

## Alternate Members Present

James Connor

Staff: Crystal Galloway, *Planner I*

These minutes serve as 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 online at [www.rochesternh.net](http://www.rochesternh.net) for a limited time for reference purposes.

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Chair Larry Spector called the meeting to order at 7:00 p.m.

The recording secretary, Crystal Galloway, conducted roll call.

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### **3. Seating of Alternates:**

Mr. Spector said the voting members for the meeting would be Leo Brodeur, James Hayden, Michael King, James Connor, and himself.

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### **4. Approval of Minutes:**

*A motion was made by Mr. King and seconded by Mr. Hayden to approve the minutes from the May 11, 2022 meeting. The motion carried unanimously.*

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### **5. New Cases:**

**Z-22-17 Sean Desrosiers** Seeks a *Variance* from Section 2 to permit a single-family home to be built while existing house remains until completion.

**Location:** 326 Chestnut Hill Road, Map 206 Lot 7 in the Agricultural Zone.

Mr. Spector let the Board and any abutters present know the applicant had withdrawn his application.

**Z-22-18 Irving Energy** Seeks a *Special Exception* from Table 18-D to permit fuel storage.

**Location:** 323 Gonic Road, Map 258 Lot 61 in the Highway Commercial Zone.

Operations Manager Paul Paquette explained they are proposing to add a 5'x16' concrete pad with a chain link fence to store eight, 100-pound propane tanks for emergency back up to customers. Tanks are for emergency use, for example if a customer ran out of propane at their house, these tanks would be brought to the customers house and hooked up. He said the tanks will not be filled on site. There will be no traffic in and out of the property, just pickup trucks driven by the technicians. Mr. Paquette went over the five criteria. The site is an appropriate location because it is where the technicians meet in the morning and a central location to all customers. The location is not detrimental or offensive because it is a small area located in the back of the parking lot. There will be no undue nuisance, or serious hazard to pedestrian or vehicular traffic because the traffic is up behind the site on Gear Road and there will be crash barriers to protect the tanks. Adequate and appropriate facilities will be provided to ensure proper operation of the proposed use because it is just storage of tanks and a chain link fence. The proposed use or structure is consistent with the spirit and intent of the master plan because there are a lot of Rochester customers and surrounding areas and this location will help us function and serve the customers.

Mr. Brodeur asked about where the location is compared to the seating area that is near the driveway. Mr. Paquette explained that the location is at the back of the parking lot and there will be jersey barriers around two sides of the tanks.

Mr. King asked if the tanks are empty. Mr. Paquette explained the tanks would be full.

Mr. Spector opened the public hearing.

Donna Ianno, 10 Gear Road, expressed her concern with a former approved project for the same location. Mr. Paquette explained that project is null and void and they have decided on a different location in a different town. Ms. Ianno discussed her lack of knowledge with propane storage and expressed concern with kids constantly playing over in that area. Ms. Ianno discussed reading about the need of a roof over propane storage and stated that there are trees over the area. Ms. Ianno also discussed her concern about trees coming down in order to put in the concrete slab. Ms. Ianno also asked for an explanation of what 18D means on the application.

Grace Armano, 4 Gear Road, expressed her concern about the storage of propane tanks and how they are filling and disposing of these tanks consistently. Ms. Armano explained her concerns for gaseous fuels and how it is an explosion hazard. Ms. Armano expressed her concern for the safety of the neighborhood.

Mr. Paquette addressed the abutter concerns. Mr. Paquette explained Irving did not mark any trees to be taken down. The tanks will be chained up and protected by barriers. Mr. Paquette explained that there is no roof proposed, but these are the same tanks that are brought to homes and there are no roofs over those tanks. Mr. Paquette expressed that Irving is very safe and they would never put anyone in danger. Tanks are never disposed of, they are refilled and stored.

Mr. Hayden asked if the amount of propane stored in this area is the same as being stored at a home. Mr. Paquette explained that it is less than what would be stored at a home in one tank.

Mr. Connor asked what the Fire Department said about the application. Ms. Galloway said that after consultation with the Fire Department staff feels the application meets all the special exception criteria and supports the application.

*Mr. Hayden made a motion to approve application Z-22-18 as presented. Mr. Brodeur seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-19 David White** Seeks a *Special Exception* from Section 23.2.A(1)(a) to permit an accessory apartment within an existing 2-car garage.

**Location:** 271 Chesley Hill Road, Map 138 Lot 99 in the Residential-1 Zone.

David White, currently living at 349 Long Hill Road in Dover, presented the application. Mr. White discussed renovating the detached garage for his parents to live in. Mr. White went over the special exception criteria. The specific site is an appropriate location because it is an existing 2 bay garage located on the property 40 feet behind the existing house, and the applicant would just be renovating what is already existing rather than building something new. It is not detrimental, obnoxious, or offensive to anyone in the neighborhood as it is already existing and is simply just changing use. There is no undue nuisance, hazard to pedestrian or vehicular traffic because traffic patterns will not need to change. Proper utilities and facilities will be added to the proposed use. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because it will allow for the family to make best use of the property and contribute to the neighborhood.

Mr. Brodeur asked about the intent of both applications. Mr. White explained that the Special Exception was for an accessory dwelling unit that is not attached, and the Variance is for the total square feet exceeding 800 square feet.

Mr. King asked if any garage space will remain or if it will all be turned into dwelling unit. Mr. White explained that most likely it will all be converted into residential unit.

Mr. Spector opened the public hearing.

Lynn White, mother of David White, discussed their excitement to become resident of Rochester and explained to the board that they are more than willing to follow all regulations and ordinances to make that happen.

*Mr. Brodeur made a motion to approve Z-22-19 as presented. Mr. Hayden seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-20 David White** Seeks a *Variance* from Section 23.2.A(1)(d) to permit an accessory apartment in excess of 800 square feet.

**Location:** 271 Chesley Hill Road, Map 138 Lot 99 in the Residential-1 Zone.

David White, current resident of 348 Long Hill Road in Dover, presented the Variance application. Mr. White discussed the desired square footage of the dwelling unit of 1,600 sf, which is the current footprint of the structure. Mr. White read through the variance criteria. Granting the variance would not be contrary to the public interest because it would allow long term residence to exemplary citizens. Mr. White explained that it enhances an older residential area through renovation rather than tearing down. If the variance was granted it the spirit of the ordinance would the well-being of the be observed because it would support the principal use of the property and encourage neighborhood and city through its residents and it would maintain the essential character of the neighborhood. Granting the variance would do substantial justice because it would provide benefits from the new residents and is consistent with its present use of the neighborhood and it will benefit the property owners and will not cause any loss or harm to the general public. If the variance is granted the values of the surrounding properties would not be diminished, if anything they would go up because of the improvements of the proposed application. Denial of the variance would result in an unnecessary hardship to the owners because of the configuration and location of the property impedes alternative adjustments. Mr. White explained that it makes the most sense to renovate what is already there, rather than add onto the house or build something new. Denial of this variance would stand against

ordinance purposes because of certain parts of the ordinance in 275.1. The proposed use a reasonable one because due to the layout and configuration of the lot it is best to renovate what is already there.

Mr. Spector opened the public hearing. None seen, brought it back to the board.

Mr. Hayden asked if the garage is one story or two? Mr. White stated it is two story and they are looking to make the living space on the first floor to make it easily accessible.

Mr. Brodeur asked if the first floor and second floor will both be used? Mr. White explained that the first floor would be for residential use and the second floor would be an attic storage space which is what it currently is. Mr. Brodeur asked if they are going to stop using the garage? Mr. White stated yes.

Mr. Brodeur discussed the limit being 1,400 square feet. Mr. White stated he believes the footprint of the building is 1,560 square feet.

Mr. King asked if it could be rented out. Mr. Spector stated it cannot be rented out.

*Mr. King made a motion to approve Z-22-20 with the conditions that it is not rented out and that it does not exceed 1,400 square feet.*

Mr. Brodeur suggested amending the motion to 1,600 square feet since the footprint is just over 1,500 square feet. Mr. Brodeur asked for staff recommendation on the application.

Ms. Galloway discussed staff recommendations and that they do not meet the hardship criteria.

Mr. King asked if any other properties in the area have a dwelling unit that exceeds 800 square feet. Mr. Brodeur stated that this is a unique property, and the building is already there.

Mr. King withdrew his last motion.

*Mr. King made a motion to approve Z-22-20 with the condition that the dwelling unit does not get rented out and be used by an extended family member. Mr. Connor seconded the motion. The motion carried by a unanimous roll call vote.*

### **Z-22-21 Milton Associates, LLC Seeks a *Special Exception* from Table 18-C to permit a food truck.**

**Location:** 163 Wakefield Street, Map 113 Lot 48 in the Highway Commercial Zone.

Christa Capello, owner of Milton Associates, LLC, d/b/a The Pink House located in Milton NH. Ms. Capello discussed how the Pink House operates, daily hours, where it would be located on the property, and the type of food it will be serving. Ms. Capello read through the special exception criteria. The specific site is an appropriate location for the structure because it is easily accessible by foot and vehicular traffic and is adjacent to a variety of food. It is not detrimental, injurious, obnoxious, or offensive to the neighborhood because there are already fast food and drive thru restaurants that currently serve the neighborhood. The proposed location would not obstruct or impede any flow of traffic. The proposed location is visible and convenient to foot traffic that would utilize the foot stand. The proposed food stand is a self-contained mobile food truck unit that would not adversely affect any utilities whatsoever. The mobile food truck as a food stand would keep within the spirit of the ordinance and intent of the master plan for the enjoyment of the community.

Mr. Brodeur asked if the truck is parked on the side of the car wash. Ms. Capello stated yes. Mr. Brodeur asked how people coming from the high school would see the truck? Ms. Capello stated the truck is pink and we typically don't need much more than that. Mr. Brodeur asked about the distance from the vacuums to the truck. Ms. Capello explained that from the building to the vacuums is 40 feet, and the truck can be up

close to the building and the truck takes up roughly 8 feet which would leave 30 feet from the truck to the vacuums.

Mr. Spector opened the public hearing.

Mark, general manager of The Pink House, explained that the owners of Mr. Bubbles are personal friends of his and they are just looking to support each other's business.

Mr. Spector asked for staff recommendation on the application. Ms. Galloway stated that staff feels the criteria has been met.

*Mr. Brodeur made a motion to approve Z-22-21 as presented. Mr. Hayden seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-22 Donna Johnson** Seeks a *Special Exception* from Table 18-B to permit a Childcare Center with a self-directed learning program for middle and high school aged children.

**Location:** 16 Whitehall Road, Map 126 Lot 15 in the Hospital Special Zone.

Donna Johnson, owner of Storybook Hollow, and Amber Baud, Assistant Director of Storybook Hollow, presented the application. Ms. Baud gave a brief background of the company. Ms. Baud read the Special Exception criteria. The proposed project is not in contrary to public interest because our community is in desperate need for quality childcare and different educational opportunities. The spirit of the ordinance is observed. The essential character of the neighborhood would not be altered by this program or threaten public health or safety. Substantial justice is done because there are approximately four childcare centers in the area that have shut down, resulting in hundreds of families losing their childcare and parents scrambling to find alternate solutions. The values of surrounding properties will not be diminished because we have always run a high-quality program and we have good curb appeal. Literal enforcement of the ordinance would result in unnecessary hardship because without this we wouldn't be able to operate at this property and the community would continue to suffer without adequate childcare. The proposed use is a reasonable one because the property provides adequate square footage, close to public transportation for those who need it, a parking lot that is partially fenced off, and it is across the street from the hospital in case of emergencies. Without the variance we wouldn't be able to operate at this location. Ms. Johnson said that it is difficult to find a location that will accommodate the dual needs they are looking to do.

Mr. Brodeur asked what the age range is going to be? Ms. Baud explained it would be 4-18; the four-year-olds up to elementary age will have their own space, and high schoolers will have their own space. Mr. Brodeur asked about the home school aspect and if it is in addition to what parents are doing at home or in lieu of? Ms. Baud explained that Storybook Hollow will offer courses and the parents can bring their children there but there is also the choice to be a safe space for older kids who are choosing to homeschool but can't be left home alone. Ms. Johnson discussed the isolation aspect of being homeschooled and the opportunity for those kids that are homeschooled to be around others.

Mr. Spector opened the public hearing.

Lori Smart, owner of 16 Whitehall Rd, discussed the variance they received roughly 6 years ago. Ms. Smart explained what they do currently and what the property was previously used for, but that the property is currently vacant. Ms. Smart explained that the property is way underutilized, and it would be great to see the property used as this proposed childcare center.

Ms. Johnson explained that the childcare center is going to be a dual-purpose center for working families in the community and for home schooled children.

Mr. Spector asked about staff recommendations. Ms. Galloway said that staff feels all criteria has been met for this application.

*Mr. Hayden made a motion to approve case Z-22-22. Mr. Brodeur seconded the motion. The motion carried by a unanimous roll call vote.*

**Z-22-23 86 Church Street, LLC** Seeks a *Variance* from Section 30.3.A to permit an expansion of a previously approved non-conforming use to allow additional multi-family dwellings in the Agricultural District.

Steven Hide, attorney representing the applicant, presented the variance application. Mr. Hide gave a brief background of the property. Mr. Hide explained that the property is in the agricultural zone and was approved around 1979 for multi-family dwelling units and a single-family home. Prior approvals from the city were for 18 dwelling units, but the prior owners chose to only do 12 units in two separate buildings. The property is serviced by city water and sewer. Per the density calculation 33.7 units could be developed on the property.

Mr. Hide read through the variance criteria. The variance will not be contrary to the public interest because it will allow the proposed allotted density to be placed in a previously developed area, while leaving the single-family residence currently located on the sister lot in place. The proposed townhouses will be in keeping with the existing townhouse structures on the property. The spirit of the ordinance is observed because the combined lot will have more than the minimum frontage required by the ordinance and the addition of the units requested is permitted by the ordinance that allowed for the addition of 33.7 additional units to the combined parcel, whereas only 30 additional units are proposed. Substantial justice is done and achieved by allowing the productive development of a site already containing the use to be expanded, by expanding that permitted nonconforming use in an area that has congruent development on nearby projects. The values of the surrounding properties will not be diminished because the development will occur upon a lot where the same is existing and in an area where other neighboring lots are development in a manner similar or significantly higher density while leaving a significant portion of the parcel in its natural state aside from the anticipated addition of nature trails. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because the existing use was previously permitted upon due consideration of the general purposes of the City's overall zoning and was found to be in keeping with general purposes of the agricultural zone. The property is distinguished from the properties immediately abutting it because it currently contains both a multi-family use and a significant recreational opportunity. The proposed use is a reasonable one because it allows for the expansion of an existing use by development of the parcel of land while respecting the needs of the area parcels to retain the rural feel of their lots and without compromising viewshed from route 125 or Church Street. This is an agricultural property that is not able to be used as an agricultural property without affecting those that already live on the property.

Mr. Brodeur expressed his concern with the congestion around the last four units and how large the roadway will be going into the parcel. Mr. Hide explained that the roadway will be made wider than what it is currently and there will be a total of 87 parking spaces, which exceeds the requirement. Mr. Brodeur asked about the fence right against the golf course and if there are any problems with flying golf balls? Mr. Hide said there is plans to put a fence there. Mr. Brodeur asked if these units will be for sale or for rent. Mr. Hide explained as of right now they will be rentals at market price, but down the line could potential be condo conversions. Mr. Brodeur expressed his concerns about traffic on a two-lane road during high traffic hours.

Mr. Hayden asked if there were any zoning conflicts with moving the lot line and having a single-family home on a property with multi family dwellings. Ms. Galloway said she does not believe there are any conflicts.

Mr. Spector opened the public hearing. None seen, brought it back to the board.

Mr. Spector asked for staff recommendations. Ms. Galloway explained that city feels the unique characteristic of this property is that is it an agricultural property that sits in the density ring, which is one of four or five properties in the whole area. It would seem that the intent of the density ring is for higher density

and a unique characteristic, but other agricultural properties outside of the density ring still need to follow the ordinance, this would meet the hardship criteria.

*Mr. King made a motion to approve case Z-22-23 as presented. No one seconded the motion.*

*Mr. Brodeur made a motion to deny case Z-22-23 because the number of units, the density is too high. Mr. Connor seconded the motion. The motion carried by a 3-2 roll call vote.*

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## **6. Review and update of By-Laws**

Mr. Hayden suggested clarifying if we “accept” or “approve” a case.

Mr. Hayden asked if it was possible to move the meeting time up to 6:30 p.m. Mr. Spector explained that he doesn’t get home until 6 p.m. some nights. Ms. Galloway stated that most other boards have moved their start times up to 6 p.m. or 6:30 p.m. The board decided to keep it at 7.

Mr. Spector asked staff to work on template motions to hand out.

## **7. Other Business/Non-Scheduled Items:**

None at this time.

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## **8. Adjournment:**

*A motion was made by Mr. Hayden and seconded by Mr. Brodeur to adjourn at 7:52 p.m. The motion carried unanimously.*

Respectfully Submitted,

Ashley Greene,  
Administrative Assistant II

and

Shanna B. Saunders,  
Director of Planning & Development