

City of Rochester Zoning Board of Adjustment

Wednesday November 9, 2022

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on December 14, 2022)

Members Present

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

Members Absent

Alternate Members Present

James Connor
Lance Powers
Laura Zimmerman

Staff: Shanna B. Saunders, *Director of Planning & Development*
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 for a limited time for reference purposes.

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

The recording secretary, Crystal Galloway, conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be the five regular members, Mr. Brodeur, Mr. Hayden, Mr. King, Mr. Winders, and himself.

4. Approval of Minutes:

A motion was made by Mr. Brodeur and seconded by Mr. Winders to approve the minutes from the September 14, 2022 meeting. The motion carried unanimously.

5. New Cases:

Z-22-32 Back Hill Beer Company, LLC Seeks a *Special Exception* from Table 18-C to permit a food truck in the office commercial zone.

Location: 73 Pickering Road, Map 142 Lot 3 in the Office Commercial Zone.

Applicant Peter LaPlante explained he and his wife are the owners of Back Hill Beer Company located in the Gonic Mill building. He said they are requesting a Special Exception to have a food truck located in the parking lot of the mill building. Mr. LaPlante explained they have received Special Events Permits in the past to allow a food truck for functions with all the pertinent people signing off including the Chief of Police, Fire Department, and City Manager.

Mr. LaPlante explained it is a typical thing for breweries to have a food truck and said he has been approached multiple times by a number of different food truck owners. He said the brewery offers a few food items but they are not a restaurant, they are a brewery, and they work with local businesses to provide food on site.

Mr. LaPlante read through the five criteria. He said the proposed site is an appropriate one because it proposed no obstruction to the buildings usage and has been approved by all required City Departments under a Special Events Permit in the past. There will not be any obstructions to the existing use, and they will operate within reasonable hours. The location for the food truck has been approved by the City Fire and Police Departments for safety and it is not close enough to residents to cause a nuisance. The food trucks will be fully licensed by the City of Rochester and the State and there are adequate restroom facilities available within the building. The food trucks are a vital piece of brewery culture in the state and the country. Being able to have a food truck will enhance the customer experience while also bringing more business into the Gonic area.

Mr. Brodeur asked how many food trucks will be on site. Mr. LaPlante said it will be one food truck at a time. He added there isn't enough room for more than one at a time. Mr. Brodeur asked what the truck size is. Mr. LaPlante explained the typical food truck is approximately 20 feet long by 10 feet wide. Mr. Brodeur asked what the hours of operations are. Mr. LaPlante said they are open Thursday thru Sunday with the hours varying slightly. He said they close every night at 9:00pm except Sunday they close at 7:00pm. Mr. Brodeur asked where the truck will be located. Mr. LaPlante said there are four loading bays located off Pickering Road. He said the two docks located to the right do not work and are not being used, that is where the outdoor seating area is set up and the food truck will sit in front of that area.

Mr. Spector asked for the City's position. Ms. Saunders said the City feels the application meets the criteria for a Special Exception.

Mr. Spector opened the public hearing. There was no one present from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

The Board began deliberating the criteria. Mr. Brodeur said the site is adequate where the truck can be located off the street but still located in front of the building.

Mr. Winders said because of the location and everything the applicant mentioned it will not be obnoxious, offensive or hazardous to the neighborhood. Mr. Winders said the Master Plan the City is about bringing more revitalization to areas and believes a food truck would be a great addition.

A motion was made by Mr. Winders and seconded by Mr. Hayden to approved case Z-22-32 as presented because it meets all the criteria, as stated and discussed. The motion carried unanimously by a roll call vote.

Z-22-33 New Hampshire Signs Seeks a *Variance* from Section 29.13.G(1) to permit an Electric Message Center of 60 square feet where only 32 square feet is allowed.

Location: 298 North Main Street, Map 115 Lot 31 in the Highway Commercial Zone.

Peter March of New Hampshire Signs presented the application for a variance. He explained they are seeking a variance to allow a larger electric message center than is allowed by code located at the former Brocks Lumber site which is now Hammond Lumber. Mr. March said they also want to change the angle of the sign so it is more suitable to traffic on North Main Street. He said Hammond Lumber competes with Home Depot and Lowes so they need larger signs to promote their products and services.

Mr. March read through the criteria. He said it is in the public interest to level the playing field, and to ensure that Hammond Lumber gets a fair chance to promote itself. It is also in the public interest to allow companies to compete fairly; this proposal ensures that a level playing field is created between local companies. The spirit of the ordinance will be observed because the sign will provide more effective means of communication for traffic seeking Hammond Lumber and allows them to communicate directions more effectively; this also helps mitigate the negative effects of the road change. Substantial justice would be done to the property owner because there are no other reasonable alternatives to identify the offerings for both commercial and residential construction other than to add signage. It is necessary to identify the retail and commercial for traffic purposes as well as promotional reasons. The proposed use will not diminish the values of surrounding properties because there are several other signs in the area of the same scale and height as the sign that is being proposed. Enforcement of the provisions of the ordinance would result in an unnecessary hardship because the disadvantages forced on this site are not of its own making. The changes to the exit have created a unique situation where Hammond's clientele must access its facility adjacent to a competitor; no other business in the area has this unique situation.

Mr. Brodeur asked where the sign will be moved to if the variance is granted. Mr. March said they are not proposing to move the sign, they will simply enlarge the existing electronic message center to 60 square feet. He further explained the intent is to show direction to the store and promote their products and services.

Mr. Brodeur clarified that the references made by the applicant regarding other larger signs in town are all multi-tenant signs.

Mr. Spector asked if it is possible to change the angle of the existing sign without making it larger. Mr. March explained the issue is the amount of message that can be put on the existing sign. He further explained they would like to add more complex messages.

Mr. Spector opened the public hearing. There was no one present from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Mr. Spector asked for the City's position. Ms. Saunders explained the recommendation given applies to both variance requests. She said at first-look the request looks enormous but after looking at the history for some of the other locations that were cited the numbers align with the other variances that have been granted in the past. Ms. Saunders said it is staff's opinion the hardship criteria for the lot has been met. She said there is no doubt this lot has unique characteristics that set it apart from other lot within the commercial district. If the Board wished to deny the application, hardship should not be cited but instead the Board should look at Substantial Justice and Spirit of the Ordinance criteria.

Mr. King asked if there are other electronic signs and whether or not this request meets the criteria. Ms. Saunders said there are others in this corridor, the size requested does not meet the criteria.

The Board deliberated the criteria.

Mr. King said he believes substantial justice would be done for the property owner to be able to promote his business which is important.

Mr. Hayden agreed with Mr. King, adding all the criteria tie into the hardship because the sign was originally meant for Ten Rod Road before the entrance was taken away.

A motion was made by Mr. King and seconded by Mr. Hayden to approve case Z-22-33 as presented because it meets all the criteria. The motion carried unanimously by a roll call vote.

Z-22-34 New Hampshire Signs Seeks a *Variance* from Sections 29.13.G(1), 29.14.B(1), and 29.14.B(2) to permit a second free standing sign where only one is allowed, to allow a free-standing sign height of 50 feet where only 30 feet is allowed, to allow a sign of 252 square feet where only 75 square feet is allowed, and to allow an Electric Message Center of 180 square feet where only 32 square feet is allowed.

Location: 298 North Main Street, Map 115 Lot 31 in the Highway Commercial Zone.

Peter March of New Hampshire Signs explained the second request relates to the same property, with this request they are seeking a highway sign that is much larger than what is allowed. He said communication is important to companies like Hammond Lumber because they can't compete with the large box stores when it comes to advertising.

Mr. March said the proposed sign would be 50 feet tall that would be internally lit with an electronic message center that would be visible from approximately 500 feet. Mr. March said they are seeking a second sign on one lot; however, the entire site consists of five different parcels. He said the nature of the property means they have to have two signs on one parcel.

Mr. March read through the criteria. He said granting the variance would not be contrary to public interest because it is in the public interest to allow companies to compete fairly; this proposal ensures that a level playing field is created between local companies. The Lowes sign is approximately 200 square feet and its location and height make it very visible to highway traffic. Home Depot has two signs, one on North Main Street, and one facing Route 16.

The spirit of the ordinance will be observed because the request would allow highway traffic to identify Hammond Lumber and its offerings; ensure the continued success of this business and ensure a variety of suppliers and increased consumer choice; mitigate some of the disadvantages caused by the change in the exit; and recognize the business is spread over four lots, and that not all are suitable for signage. Substantial justice would be done because there are no other reasonable alternatives to identify the offerings for both commercial and residential construction other than to add the signage that is proposed. It is necessary to identify the retail and commercial for traffic purposes as well as promotional reasons. Surrounding property values would not be diminished because there are several other signs in the area of the same scale and height as the sign that is proposed.

If the variance was not granted an unnecessary hardship would result because the disadvantage forced on this site are not of it's making. The changes to the exit have created a unique situation where Hammond's clientele must access its facility adjacent to a competitor. No other business in this area has this unique situation.

Mr. Spector said he doesn't mind the proposed height of the sign but the sign itself it approximately five times the size that is allowed and he is concerned about the electronic message center that large being a distraction along the highway.

Mr. Brodeur asked if they have approached either Hannaford or Home Depot about possibly adding Hammond's sign to their existing sign so there is one less distraction on the highway. Mr. March said Home Depot would most likely be averse to that because Hammond Lumber is a competitor. Mr. Brodeur clarified that the question has not been asked. Mr. March said no.

Mr. Brodeur asked how close to the highway will the sign be placed. Mr. March said it will be outside of the setback.

Mr. March asked if the timing of the sign were limited to a certain number of seconds between changes if that would satisfy the concerns in regard to distractions.

Mr. King asked if they considered not having an electronic sign along the highway. Mr. March said they did but it will help to have one. He said they would consider having a smaller sign, but they want to be able to portray the location of the store and what products they offer targeted at highway traffic.

Mr. King asked what the size of the Lowes sign is. Ms. Saunders explained staff was able to find the variances that were granted to both Lowes and Home Depot and those were included in the staff recommendations to the Board. She said because staff was unable to locate the actual permits it is unclear what the actual size of the signs are.

Mr. Spector opened the public hearing. There was no one present from the public to speak; Mr. Spector closed the public hearing and brought the discussion back to the Board.

Ms. Saunders said in the past the Board has allowed two signs on two separate frontages, however under city definitions a highway is not considered frontage. Ms. Saunders said the requirement in the ordinance for electric signage change is no greater than eight seconds apart. Ms. Saunders said she reached out to NHDOT regarding whether or not there are any requirements for them in regard to larger signs, especially electronic signs. She explained DOT is looking into the issue but hadn't heard back from yet. Ms. Saunders suggested the Board take their time in reviewing this variance request and recommended asking the applicant to submit a revised rendering showing a smaller sign.

Mr. Hayden asked if there are in fact four separate lots for the property. Mr. Spector reopened the public hearing. Scott Brock of Hammond Lumber addressed the Board to clarify there are in fact four separate lots, he receives four separate tax bills. Mr. Spector closed the public hearing.

Mr. Brodeur recommended the case be continued in order to see some alternatives. He said he would like to see just a sign for Hammond Lumber without an electric message center along the highway.

Ms. Zimmerman said criteria numbers one and three both state "threaten public health and welfare and substantial justice". She said her concern is the flashing electric sign on the highway. She would like to see it significantly smaller.

A motion was made by Mr. Winders and seconded by Mr. Hayden to continue case Z-22-34 to the December 14, 2022 meeting to allow the applicant time to revise the proposed sign as discussed. The motion carried unanimously by a roll call vote.

6. Other Business/Non-Scheduled Items:

A. Review of 2023 Meeting Dates

The Board reviewed the 2023 meeting dates.

A motion was made by Mr. Spector and seconded by Mr. Brodeur to approve the 2023 meeting dates. The motion carried unanimously.

B. Other

There was no other business to discuss.

7. Adjournment:

A motion was made by Mr. Brodeur and seconded by Mr. Hayden to adjourn at 8:07 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development