

# City of Rochester Zoning Board of Adjustment

Wednesday June 14, 2023

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on July 12, 2023)*

## Members Present

Larry Spector, *Chair*

James Connor

Michael King

## Members Absent

Brylye Collins, excused

Lance Powers, excused

Matthew Winders, excused

Laura Zimmerman, excused

## Alternate Members Present

Stephen Foster

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](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 Mr. King, Mr. Connor, Mr. Foster, and himself.

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

*A motion was made by Mr. Connor and seconded by Mr. King to approve the minutes from the May 10, 2023 meeting. The motion carried unanimously by a voice vote.*

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### **5. Continued Cases:**

**Z-23-04 Aranorian Oil Company, Inc. & Aranco Realty, Inc.** Seeks a *Variance* from Section 30.3 to permit the expansion of a non-conforming use (a gas station) and seeks a *Variance* from Table 19-A, lot coverage where 35% is allowed and they are proposing 70.7%

**Location:** 160 & 162 Charles Street, Map 128 Lots 214 & 215 in the Residential-2 and Neighborhood Mixed Use Zone.

Mr. Spector let the Board know the applicant has requested a continuance to the July 12, 2023 meeting to allow them time to review the third party traffic information.

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## **6. New Cases:**

**Z-23-15 Packy's Investment Properties, LLC** Seeks a *Variance* from Section 12 to permit the construction of solar trackers within the wetland buffer setback.

**Location:** 17 Sterling Drive, Map 208 Lot 18 in the Granite Ridge Development Zone.

Representative Joseph Margi briefly explained they are requesting a variance to be able to build in the wetland buffer opposed to building in the wetlands.

Mr. Magri read the five variance criteria.

Mr. Magri said granting the variance would not be contrary to the public interest because the project will be providing much needed solar energy to provide clean air and more locally distributed and produced power to fight the increases in energy costs. The public is trying to lessen impacts on wetlands and construction around wetlands, this variance would allow proposed construction to be moved from in the wetlands to uplands on the edge of the wetlands. Mr. Magri said the spirit of the ordinance would be observed because the 50-foot buffer is allowed to be altered and has been approved through a prior conditional use permit to be changed from forested area to a higher value use of low brush and grasslands. The ordinance is designed to keep structures and direct run off into the wetlands limited. The variance sought is for 28.29 square feet of concrete in the form of 4 posts at 7.06 square feet. Less than 10 feet of impervious surface in four spread out locations in the buffer area. The solar panels move and have gaps to prevent water channeling and increased flow because of the structure. The ordinance contemplated a structure that would create some kind of measurable water flow near or directly into the wetlands. This variance and assessor structure will create no additional water flow or no additional concentration of water flow. Having even this small amount of disturbance in the upland is better than having small impacts in the wetlands. This will also eliminate all temporary disturbance to the wetlands. Which is consistent with the spirit and intent of the ordinance. Substantial justice will be done because it will lessen the direct impact to the surrounding wetlands. The hardship of construction in the wetland on the owner is not weighed by any benefit to the public. Forcing the owner to build in a wetland would be contrary to common sense and substantial justice. Substantial justice will be done because it will lessen the direct impact to the surrounding wetlands. The hardship of construction in the wetland on the owner is not weighted by any benefit to the public. Forcing the owner to build in a wetland would be contrary to common sense and substantial justice. Substantial justice would be served by limiting the hardship of doing construction in a wetland. The hardship created by the ordinance is not necessary. The values of the surrounding properties would not be diminished because the current project has currently and is approved for the proposed construction of solar trackers it makes no material difference on the surrounding properties on the exact location of those trackers. The current property already has solar trackers and mini storage. Adding more trackers in the uplands rather than in the wetlands would not diminish values of the surrounding properties. Denial of the variance would result in an unnecessary hardship because The hardship on the owner is not out weighed by any benefit to the public. The general purpose of the ordinance is to lessen the impacts to wetlands, granting the variance will lead to less impacts on the wetlands. The proposed use is a reasonable one because the variance will grant reasonable use of the land to the property owner with no harm to the public interest or the intent of the ordinance. It is much better to build in the uplands buffer instead of the wetland itself. The property is more than 50% wetlands, the setback from the wetland cross the cross section of the property and removes a significant portion of the buildable upland from a reasonable use. This setback

is over 15% of the buildable area on the property. The hardship created by the no build greenbelt across the entire east west middle of the lot creates unnecessary hardship. This buffer through the center of the buildable area of the lot is not a reasonable restriction to keep on the property given the unique manner in which the buffer affects this particular property. The hardship created by this buffer in this location is not outweighed by any public benefit.

Mr. Spector opened the public hearing. No one from the public was present to speak; Mr. Spector brought the discussion back to the Board.

Mr. King asked how many trackers they are proposing to build. Mr. Magri said there will be 24 trackers total with 13 of them proposed with this project.

Mr. King asked how far into the buffer will the trackers be located. Mr. Magri said they will be 25-feet into the buffer. Ms. Saunders explained the plan the applicant included in the application package. She said the proposed trackers are within the 0–25-foot buffer area according to the plan.

Mr. King asked if they have reached out to NHDES. Mr. Magri said they have and were told the permit to build in the wetland would be pending if the applicant could find an alternative to building in the wetlands. He went on to say if they cannot build in the buffer zone NHDES would move forward with the permit to build in the wetlands.

Ms. Saunders explained the last time the applicant was here it was solely for the use, which was one section of the ordinance, he is now before the Board for a different section of the ordinance. She explained the applicant has requested a variance to the entire section 12 and not a specific section of the wetland buffer ordinance.

Ms. Saunders said if the Board grants the variance it should be contingent on the plan that was submitted so if anything were to change the applicant would have to come back to the Board.

Ms. Saunders further explained the City has passed a solar ordinance which allows trackers in the wetland buffer but they have to have a Conditional Use Permit which means all the criteria that goes along with that has to be met. She explained the applicant is aware of this but had decided to move ahead with the variance making it a variance of the Conditional Use Permit process and criteria.

Ms. Saunders went on to say she does not believe the applicant has met any of the criteria except the value of surrounding properties not being diminished.

Applicant Packy Campbell said the new solar ordinance allows construction in the 50-foot wetland buffer for solar trackers. He went on to explain the site layout of the proposed trackers. He said they are before the Board for an area variance and believes the criteria have been met. Mr. Campbell said by building in the buffer protects the wetlands.

Mr. Spector closed the public hearing.

The Board deliberated the criteria. Mr. Spector suggested sending the applicant to the Conservation Commission.

Ms. Saunders reminded the Board they are only looking at the five criteria set by the State, not the Planning Board process, and not whether or not the wetlands are being impacted. She said if the Board were to deny the variance the applicant would have to go back to the Conservation Commission for approval.

Mr. King said he doesn't believe the hardship criteria has been met. Mr. Foster agreed.

Mr. Foster asked why the applicant needs a variance if the ordinance states he can build within the buffer. Mr. Campbell said he thinks he does meet the hardship criteria in that the uniqueness of the lot is that it is 50% covered by wetlands over seven acres. He said the way the buffer crosses the lot is east to west, under the old ordinance it is a no build zone without zoning relief.

Mr. Connor said he believes the applicant meets the hardship criteria because it is a unique piece of property. He also believes the spirit of the ordinance and substantial justice criteria have been met as this is an alternate

to the applicant putting them in the wetland. He said the Board can limit the number of trackers in the buffer to the four shown on the plan.

Ms. Saunders said if the Board approves the variance, she recommends putting conditions on the approval similar to what conditions are outlined in the ordinance. Conditions included that the applicant needs to design and construct with methods that will minimize impacts upon the wetlands and will include restoration of the site consistent with the permitted use and if clearing is required within the Conservation Overlay District to reduce shade and improve the function of a Solar Collection System, a vegetative management plan shall be submitted with a Conditional Use Permit. Ms. Saunders went on to say that she also recommends a condition based on the applicant's testimony, that the proposed 10 x 10 concrete foundations for each of the trackers be 20 feet from the edge of the wetland.

Ms. Saunders recommended approving a variance, not from the entire section, as requested but from the section of the ordinance requiring a Conditional Use Permit and its criteria and stating that the approval is contingent upon the provided plan.

*A motion was made by Mr. King and seconded by Mr. Connor to approve Z-23-15 citing the criteria has been met with the conditions as stated. The motion carried unanimously by a roll call vote.*

**Z-23-16 Steven Magri** Seeks a *Variance* from Table 19-A to permit a two-family dwelling on a lot that has less frontage than required.

**Location:** 55 Lafayette Street, Map 124 Lot 170, in the Residential-2 Zone.

Applicant Steven Magri explained he purchased the property two years ago as a two-family however has learned that it had not been legally converted from a single family. He said to get building permits and financing for upgrades he must go through the approval process.

Mr. Magri read the five variance criteria. He said granting the variance would not be contrary to the public interest because there is a shortage of rental units in the city and this variance would keep an apartment on the market. The spirit of the ordinance would be observed because there will be no changes made to the footprint of the structure. Substantial justice would be done because the property was purchased as a two-family and later discovered it was changed in 2013 from a two-family to a single family. The values of the surrounding properties would not be diminished because much of the neighborhood is multi-family homes, a duplex would fit within the neighborhood. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because funding cannot be obtained until the classification has been changed. The proposed use is a reasonable one because the applicant is trying to fix a problem and make it right. Many of the properties in the neighborhood do not meet the frontage requirements for multi-family dwellings.

Mr. Spector opened the public hearing. No one from the public was present to speak; Mr. Spector brought the discussion back to the Board.

Mr. King asked how much frontage the property has. Ms. Saunders said there is 75 feet of frontage where 80 feet is required.

Mr. Spector closed the public hearing.

The Board deliberated the variance criteria. Mr. King said he feels the applicant has met all the criteria. Mr. Spector and Mr. Foster both agreed.

*A motion was made by Mr. Connor and seconded by Mr. Foster to approve Z-23-13 citing all criteria has been met. The motion carried unanimously by a roll call vote.*

**Z-23-17 SWD Property Management, LLC** Seeks a *Variance* from Table 18-B to permit the construction of a 10,700 s.f. retail building in the R2 zone.

**Location:** 25 Old Dover Road, Map 132 Lot 39 in the Residential-2 Zone.

The applicant requested the application be continued to the August 9, 2023 meeting to allow a full Board be present.

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

There was no other business to discuss.

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**8. Adjournment:**

*A motion was made by Mr. Connor and seconded by Mr. King to adjourn at 7:50 p.m. The motion carried unanimously.*

Respectfully Submitted,

Crystal Galloway,  
*Planner I*

and

Shanna B. Saunders,  
*Director of Planning & Development*