

City of Rochester Zoning Board of Adjustment

Wednesday October 11, 2023

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on November 8, 2023)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

Michael King

Members Absent

Matthew Winders, excused

Brylye Collins, excused

Alternate Members Present

Stephen Foster

Laura Zimmerman

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

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 Planning Director, Shanna B. Saunders, conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be Mr. Powers, Mr. Connor, Mr. King, Ms. Zimmerman for cases Z-23-46 and Z-23-47, Mr. Foster for cases Z-23-48 thru Z-23-53, and himself.

4. Approval of Minutes:

A motion was made by Mr. Powers and seconded by Ms. Zimmerman to approve the minutes from the September 13, 2023 meeting. The motion carried unanimously by a voice vote.

5. Continued Cases:

Z-23-22 MPG Corporation Seeks a *Variance* from Section 20.2.F(3) to permit fuel pumps and equipment to be 10 feet from the side lot line where 30 feet is required.

Location: 4 Little Falls Bridge Road, Map 216 Lot 12 in the Granite Ridge Development Zone.

Ms. Saunders let the Board know the applicant has requested a continuance to the November 8, 2023 meeting.

Z-23-23 MPG Corporation Seeks a *Variance* from Section 20.2.F(5) to permit a fueling canopy to be 6 feet from the side lot line where 20 feet is required.

Location: 4 Little Falls Bridge Road, Map 216 Lot 12 in the Granite Ridge Development Zone.

Ms. Saunders let the Board know the applicant has requested a continuance to the November 8, 2023 meeting.

A motion was made Mr. Powers to continue case Z-23-22 and Z-23-23 to the November 8, 2023 meeting as requested. Mr. Connor seconded. Mr. Spector made a condition that this would be the last continuance given. The motion carried unanimously by a voice vote.

6. New Cases:

Z-23-46 Brandon Marcus Seeks a *Variance* from Section 5.3 and Table 18-A to permit a three-family dwelling in the Residential-1 Zone.

Location: 66 Prospect Street, Map 119 Lot 89 in the Residential-1 Zone.

Kirsten Allen of Shaheen and Gordon, P.A presented the variance application.

Ms. Allen read the variance criteria. She said granting the variance would not be contrary to the public interest because the proposed use would not alter the essential character of the local area. The property had already been used in this manner, unofficially, and continuing the use would not alter the character of the local area. Moreover, the surrounding neighborhood in the R1 zone consists of several multi-family properties on the same block as the property. The property is on the border of the agricultural zone which allows an accessory use or in-law apartment along with two-family dwellings as permitted uses and thus, would allow the use of the primary building as a duplex along with the ADU. The proposed use would not threaten the public health, safety, welfare, or other public interest in any way. The proposed use would benefit the public interest by rehabilitating a dilapidated building and providing more affordable rental housing in the city. The spirit of the ordinance is observed because the proposed use would not alter the essential character of the neighborhood in any way. The immediate surrounding neighborhood consists of other multi-unit properties within the R1 zone. The property is adjacent to the agricultural zone which would allow a two-family unit and an ADU as a permitted use. The proposed use is not out of character for the location of the property and would not alter the essential character of the neighborhood. Substantial justice is done because there would be no gain to the public in denying this variance, while in contrast there would be substantial loss suffered by the applicant who invested in this property with the understanding that he had purchased a multi-unit property. The values of surrounding properties are not diminished because the property had already been used as a multi-family and has had an ADU noted on the tax card since at least 2007. The impact on traffic and noise from the proposed use will be minimal and consistent with what had been present at the property prior to this application. Some of the property had been in poor condition for many months prior to the applicant's purchase. The renovation and occupation will also increase the safety and aesthetics of the property and surrounding neighborhood. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the stated goal of the R1 ordinance, is to enhance these older residential areas through sensitive, small-scale infill construction, building renovation, and redevelopment. The property is large with the primary building having

1906 square feet, with 8 rooms, 3 bedrooms, and 2 full bathrooms, and the attached ADU is an additional 1254 square feet. The applicant purchased the property with the understanding that it was already a multi-family property. Denying the variance would prohibit a reasonable use of the property with no corresponding benefit to the public.

Mr. Spector opened the public hearing.

Harry Decker of 57 Prospect Street said he has lived in his home since 1990. He said when he first moved into his home the neighboring home at 66 Prospect Street was a well-maintained single-family home with an in-home upholstery business. Mr. Decker said around 2000 the home was sold and at some point it went into foreclosure. He said it sold again around 2006 and over the next 14 years the property started deteriorating and the owner was unresponsive when neighbors tried to get a hold of him. There were often transient vehicles with out-of-state plates.

Mr. Decker said he has spoken to the applicant and is appreciative of the effort he has gone through to evict the squatters that were living on the property, and the repairs he has made. However, he said neighbors have concerns about parking, driveways, and setbacks. Mr. Decker said owner-occupied is different from what it has been for the last 14 years but there are still concerns regarding the effect of permitting additional units will have on the neighborhood.

Mr. King asked Mr. Decker if he is in favor of the proposal adding additional units. Mr. Decker said he is in favor of it as long as it is an owner-occupied dwelling.

Nathan Locke said he purchased 60 Prospect Street 2 years ago. He said in the application the applicant compares the property to 54 Prospect Street which the police have been to the house approximately 30 times within the past year. Mr. Locke said if the variance is granted his property would be in-between 2 multi-family properties in a single family residential-1 zone. He asked the Board to deny the variance because there are many concerns, and the owner cannot be forced to keep it as an owner-occupied property.

Ms. Saunders read the following email from an abutter:

Dear Members of the Rochester Zoning Board, I hope this message finds you well. I am writing to express my strong opposition to the proposed change in zoning for 66 Prospect Street, which seeks to convert the property from a single-family home into a three-unit property.

I have been a resident of the neighborhood for several years, and I have witnessed the troubled history of this property. It has repeatedly fallen into foreclosure and has been in a constant state of disrepair. The property has been a source of concern for the community, as it has, at times, harbored vagrants and contributed to a sense of insecurity and blight in our neighborhood.

What is particularly troubling is that the new property owner initially communicated to multiple families in the neighborhood that their intention was to restore 66 Prospect Street into a single-family home. This commitment was reassuring to the community and aligned with the character and zoning of our neighborhood.

Changing the zoning to allow for a three-unit property would not only contradict the assurances given by the property owner but also have a detrimental impact on the neighborhood's stability, aesthetics, and property values. It could potentially attract a transient population, further straining community cohesion and potentially exacerbating safety concerns.

I implore the zoning board to consider the well-being of our neighborhood and the commitments made by the property owner when evaluating this request. Maintaining the current single-family zoning for 66 Prospect Street is in the best interest of our community's integrity and our residents' peace of mind.

I appreciate your attention to this matter and the work you do to uphold the zoning regulations that protect the character of our neighborhood. Please do not hesitate to reach out if you require any further information or if I can assist in any way during your deliberations.

Thank you for your dedication to preserving the quality of life in our neighborhood.

Sincerely, Susan Howe 52 Prospect St. Rochester, NH 03867

Applicant Brandon Marcus addressed the parking concerns the neighbors have. He said the property had been used as a commercial property in the past as well as a primary residence and there is a large, oversized garage and adjacent to that is a parking lot that had been created by the former owner. Mr. Marcus said if the variance were approved there would be plenty of parking to support three units.

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

Ms. Saunders explained an accessory dwelling unit is only permitted as part of a single-family home. She further explained if the Board were to grant the variance, they would be approving a multi-family dwelling not as the application stated, an accessory dwelling unit with a duplex, because an ADU can only be part of a single-family home. In addition, the unit is larger than what is permitted for an ADU.

Ms. Saunders reminded the Board a variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance because of special conditions of the property and that these special conditions make it different from any other property in the area. Or when the prohibited use does not serve the public purpose of the Zoning Ordinance. A quick review of surrounding units shows that most surrounding are single family homes. The Board has considered the size of the structure in the past. This structure has approximately 3800 sf of living space.

The Board deliberated the variance criteria. Mr. Powers said he doesn't feel the applicant met the hardship criteria, there are no more unique characteristics of the lot than surrounding properties.

Mr. Powers said it is contrary to the public interest because of the surrounding single-family homes. Mr. King said he believes it would be a benefit to the community because it would provide more housing units.

Ms. Zimmerman said she believes surrounding property values would be diminished because it will be a multi-family property in a single-family neighborhood.

Mr. Foster said he lived in the neighborhood for 12 years and knew the original owner who kept the property well maintained. He said he doesn't feel a multi-family property meets the spirit of the neighborhood.

A motion was made by Ms. Zimmerman to deny case Z-23-46 based on the hardship has not been met, the project IS contrary to the public interests as it WILL change the make up of the neighborhood and the values of the surrounding properties would be diminished. Mr. Powers seconded. The motion carried by a 4 to 1 roll call vote. Mr. King opposed.

Z-23-47 Julie Rabchenuk Seeks a *Special Exception* from Section 24.4.D to permit a Home Occupation-3 for Barn Sales.

Location: 142 Rochester Hill Road, Map 134 Lot 16 in the Residential-2 Zone.

Applicant Julie Rabchenuk presented the applicant for a special exception to allow a Home Occupation-3 at her residence. She said there is a large barn on the property which she proposes to use as a high-end, affordable, seasonal, thrift store. Ms. Rabchenuk said there is plenty of options for parking, whether it be on Rochester Hill Road or Stoneridge Drive.

Ms. Rabchenuk read the criteria for a special exception. She said the site is an appropriate location for the proposed use because the area is composed of residential and commercial properties. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the use is family friendly. There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because there is ample off-street parking, and it is off the main road located on Stoneridge Drive. There will be adequate and appropriate facilities and utilities provided to ensure the proper operation because electricity is all that is needed for seasonal use which is existing in the barn. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because the community needs family owned and operated businesses.

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

Ms. Saunders said staff can work with the applicant regarding parking as part of the minor site plan review process.

The Board deliberated the criteria. They felt all criteria had been met. Mr. Powers suggested parking be off to the left side of the property. Mr. Spector agreed.

A motion was made by Mr. King to approve case Z-23-47 citing the criteria has been met with the condition parking must be on-site, not on-street and recommended locating it on the left side of the property. Mr. Powers seconded. The motion carried unanimously by a roll call vote.

The Board opened cases Z-23-48 and Z-23-49 to have one discussion regarding wetland boundary setback requirements.

Z-23-48 NM Cook Development, LLC Seeks a *Variance* from Section 12.8 to permit the corner of a proposed building within 50' of a wetland boundary.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Z-23-49 NM Cook Development, LLC Seeks a *Variance* from Section 12.8.B(8) to permit land disturbance within 25' of a wetland boundary.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Christopher Berry of Berry Surveying and Engineering explained the applicant is proposing to develop the underutilized parking lot with a mix of commercial development in multiple buildings which includes merging the two parcels to have one project site. He said the rear of the site is proposed to be developed with a building that is approximately 12,500 square feet in size which will contain a full basement for storage. The first floor commercial space is designed with a large inviting sidewalk at the front to make way for integrated landscape features as well as activated space. The rear building is of regular increment and is positioned as far to the south as the site will allow. The parking array to the south, parking adjacent to the plaza and the installation of sidewalk for walkability positions the building on the site. Due to this positioning the rear corner of the building is located within the 50' wetland setback.

The center of the site contains the main drive aisle and is designed to promote all the users of the site to enter and exit through the northern entrance.

Two buildings are proposed at the front of the site. The northern building is approximately 3,600 square feet and the southern building is approximately 3,200 square feet in size. The intent of the two separated buildings is to promote internal landscaping, visual connection to the rear of the site and the creation of internal activated space. The walkway adjacent to the center aisle are proposed to be an inviting 8' wide. The primary store fronts of the buildings will be internally facing, the architectural requirements of the Granite Ridge Development zone will dictate the required features facing Route 11.

The southern building is proposed to contain a tenant that would require a drive-thru order and pickup window and is logically proposed along the length of the building facing Route 11. As noted, the best traffic pattern for Route 11 and the site is to promote activity at the northern most entrance. This entrance provides for the greatest queue length for the user and will remove the possibility of stacking into the entrance and exit lanes. Additionally, a by-pass lane is proposed to eliminate the potential for congestion. Placing the pickup window on the southern end of the building is not possible due to existing traffic conflicts with the gas station and access in and out of the existing plaza site at the southern entrance.

The design is careful to create an internal traffic connection, safe pedestrian connection and a cohesion between the proposed pad sites using landscape, hardscape, and activated space.

Mr. Berry read the variance criteria. He said granting the variance would not be contrary to the public interest because the public interest is in keeping the largest protections to the natural wetland system as practical while providing an opportunity for landowners to exercise property rights. In this case the area of the site where the building is proposed within the 50' required setback has historically been disturbed and is in an unnatural condition. If the variance were granted, the spirit of the ordinance would be observed. In other commercial zones buffer reductions such as this are permitted with the overlay district. This speaks to the balance placed in the ordinance to environmental sensitivity and economic growth. The incursion into the setback is small and is within an area of previous disturbance and is within the spirit of allowing controlled development to take place in economically developing sections of the city. Substantial justice in this case is achieved whereas the benefit to the applicant far outweighs the detriment to the general public or the ordinance as a whole. The ordinance permits disturbances within the 50' setback by conditional use for specific uses, however the building is not a listed use. The proposed building proposes no greater detriment to the wetland than an access road or prior disturbance found onsite. The reduction of the leasable space onsite for the purposes of removing the impact within an impacted area is a detriment to the applicant and is avoidable with granting of the variance. If the variance were granted, the values of the surrounding property values will not be changed. The uses proposed are commercial and are within the Granite Ridge Development zone which is inherently commercial. The change in the wetland setback will have no bearing on the abutting land uses and therefore will not affect value. The special condition of this parcel is the general dimension of the property in relation to the existing buildings already situated on the project site. When these factors are considered, adjacent to the wetland onsite, which cuts through the corner on an angle, the constraints pose an unnecessary hardship to the applicant. Denial of the variance would cause an unnecessary hardship to the owner in that it places the site as an economic disadvantage to other identical sites in more favorable zones. This is unnecessary if the variance is granted for a minor encroachment within the 50'.

Mr. Spector opened the public hearing.

Kevin Sullivan of 28 Birchwood Avenue spoke on behalf of the Conservation Commission. He said the Commission would like the ability to provide formal comments on the proposed buffer impacts because the members had some concerns with the proposed building being so close to the wetland.

Mr. Sullivan said there seems to be some avoidable impacts, such as on the corner of the proposed building. Mr. Sullivan said the biggest concern is the justification for the need to pave the roadway through the buffer. He said there is also concern whether the crossing is rated for vehicular traffic or if it's just for OHRV's.

Mr. Berry explained the number of vehicles that will be moving between the two properties will increase in size and load with this new proposal, and there should be a paved surface through the area.

Ms. Saunders said staff's recommendation is to continue both variance requests to the November meeting and be referred to the Conservation Commission for review.

A motion was made by Mr. Powers to continue case Z-23-48 and Z-23-49 to the November 8, 2023 meeting to allow the Conservation Commission time to review the project and make a recommendation. Mr. Foster seconded. The motion carried unanimously by a voice vote.

The Board opened cases Z-23-51 thru Z-23-53 to have one discussion regarding boundary line setback requirements.

Z-23-51 NM Cook Development, LLC Seeks a *Variance* from Section 8.5.B.10(a)(1) to permit minimum building setbacks closer than 100' to the rear boundary line.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Z-23-52 NM Cook Development, LLC Seeks a *Variance* from Section 8.5.B.10(a)(1) to permit minimum building setbacks closer than 50' to the front boundary line to Farmington Road.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Z-23-53 NM Cook Development, LLC Seeks a *Variance* from Section 8.5.10(a)[b][2] to permit development without the need for the 300' buffer requirement.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Mr. Berry read the variance criteria. He said the public interest is to provide separation of larger projects within the Granite Ridge Development zone from abutting users that are likely not within the Granite Ridge Development zone. In this case there is a large, wooded buffer between the rear building and the closet abutting non-congruent use. The building proposed is not imposing and is not proposed to be a tall mixed-use building. The spirit of the ordinance would be observed whereas the project design is relatively small in horizontal and vertical scale. Larger setbacks are supported in projects that have larger massing associated with them. This can be seen later in the Granite Ridge Development ordinance where buffers from larger structures is contemplated. Substantial justice is achieved where the applicant is allowed to develop a site that does not contain an abundance of depth, on a scale that is practical given the context of the site. If the variance were granted, the values will not be diminished whereas the proposed reduction in the rear setback is not outside the disturbances and constraints currently observed on the site now. The buildings are not proposed to be large or imposing and are on the same scale as what has been developed on the site in the past. The special condition of this parcel is the shape in the context of the scale of the proposed project. The lack of sizable depth makes compliance and reasonable development of a parcel in the Granite Ridge Development zone impossible and therefore constitutes an unnecessary hardship to the applicant. If the intent is to promote larger building projects to have larger setbacks, there is no substantial relationship to projects that are smaller in footprint and profile. It is unreasonable to think the properties in the Granite Ridge Development zone with such stout depths could reasonably be developed to a high potential with such a large rear setback. This poses an unnecessary hardship on the applicant by not permitting the highest in best use of a parcel in a zone that promotes the highest and best uses.

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

Ms. Saunders explained when the Granite Ridge Ordinance was rewritten, staff knew that these lots did not have the size to support the new dimensional requirements, because they were some of the smallest lots in the district. For that reason, they meet the hardship criteria in that their size is unique compared to other lots in the zone.

The Board discussed the criteria and agreed.

A motion was made by Mr. Powers to approve case Z-23-51 citing all criteria has been met. Mr. King seconded. The motion carried unanimously by a roll call vote.

A motion was made by Mr. Powers to approve case Z-23-52 citing all criteria has been met. Mr. Foster seconded. The motion carried unanimously by a roll call vote.

A motion was made by Mr. Powers to approve case Z-23-53 citing all criteria has been met. Mr. Connor seconded. The motion carried unanimously by a roll call vote.

Z-23-50 NM Cook Development, LLC Seeks a *Variance* from Section 23.2(7)(a) to permit a drive thru window to be placed on the front of a structure.

Location: 0 & 17 Farmington Road, Maps 216 & 221 Lots 29 & 164 in the Granite Ridge Development Zone.

Mr. Berry read the variance criteria. He said the public interest is ensuring the corridor is not lined with drive-thru services at the front of project sites, which tend to cause traffic congestion and queuing issues with public highways. In this case, the purpose of the request is to ensure there is adequate traffic management and queue length for the modern-day drive-thru and pick up window. The spirit of the ordinance is likely to promote building facades that face the corridor. Drive-thru location and proper building facades are not mutually

exclusive items. The site will contain a landscaped design between the aisles and the right of way and the building design can still contain architectural elements that are required in the Granite Ridge Development zone. Substantial justice is provided by allowing the owner to develop the site in a cohesive manner that promotes the best traffic and pedestrian management. There is no detriment to the ordinance or the general public in light of the fact that the alternative options were reviewed and found to pose site related issues that are contrary to other sections of the Granite Ridge Development zoning ordinance. If the variance were granted the values of the surrounding property value would not be diminished. There are no abutting properties that would be impacted by allowing the drive-thru components to be placed at the front of the site. In fact, the closest abutting residential user is at the rear of the project site. The special condition of this parcel is the width versus the depth of the property in conjunction with the two restricted, dedicated, access points on the property. The Granite Ridge Development zone promotes small commercial pods that are interconnected by walks, activated spaces, and cohesive traffic flow. On this property, the public purpose noted above and the public purpose of providing drive-thru items on the side and rear for traffic management reasons are in conflict with one another. Since the traffic management proposed is the reason for the placement of the drive-thru there is no substantial relationship between the two. Denial of the variance would cause an unnecessary hardship in creating a disjointed development on the project site. If a drive-thru were forced on the rear or side of the building each pad site would be designed to work independently of each other creating disconnection on the entire site. The proposed use is reasonable whereas the traffic management component and the aesthetic purpose can be satisfied despite having the drive-thru on the front of the building.

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

Ms. Saunders explained staff has sat down with the applicant several times to review concept plans. She said staff is having trouble understanding why the drive-thru cannot be placed to the rear of the building. This proposal creates a traffic flow issue. Ms. Saunders said she doesn't believe the criteria has been met, specifically the hardship.

Mr. Powers said he agreed with staff. He went on to say if there are people at the gas pumps they would be exiting to the left toward the out-bound lane of the drive-thru.

Mr. Berry said one of the items that had been discussed during the TRG meeting was to make that lane and exit only and the in-bound entrance to the pumps would remain because you can't dictate which side a vehicle someone pumps gas from.

The Board deliberated the criteria. Mr. Spector said it's nice to have a drive-thru however, the building doesn't need it.

Mr. King said by having the drive-thru it is contrary to the public interest, and the spirit of the ordinance is not upheld.

Mr. Berry said they would like to withdraw the applicant for a variance without prejudice.

7. Other Business/Non-Scheduled Items:

There was no other business to discuss.

8. Adjournment:

A motion was made by Mr. Powers and seconded by Mr. Connor to adjourn at 8:32 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development