

City of Rochester Zoning Board of Adjustment

Wednesday December 13, 2023

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on January 10, 2024)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

Stephen Foster

Members Absent

James Connor, excused

Michael King, excused

Matthew Winders, excused

Brylye Collins, excused

Alternate Members Present

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 <http://www.rochesternh.gov/> for a limited time for reference purposes.

1. Call to Order

The Chair called the meeting to order at 7:20 p.m.

2. Roll Call

The Planning Director, Shanna Saunders, conducted roll call.

3. Seating of Alternates:

Mr. Spector said the voting members for the meeting would be Mr. Powers, Mr. Foster, Ms. Zimmerman, and himself.

4. Approval of Minutes:

A motion was made by the Mr. Powers and seconded by Mr. Foster to approve the minutes from the November 8, 2023 meeting. The motion carried unanimously by a voice vote.

5. Continued Cases:

Z-23-59 Robert Trott Seeks a *Variance* from Section 23.2.A(20) to permit construction of a shed within the side setback.

Location: 55 Bailey Drive, Map 224 Lot 324-24 in the Residential-1 Zone.

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

A motion was made by Mr. Powers and seconded by Mr. Foster to continue case Z-23-59 to the January 10, 2024 meeting as requested. The motion carried unanimously by a voice vote.

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. ***Continuance Request to the January 10, 2024 meeting.***

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.

The applicant requested a continuance to the January 10, 2024 meeting to allow the Conservation Commission adequate time to review the application.

Ms. Saunders explained the Board voted to continue at the last meeting so a new vote was not needed.

Z-23-62 Corey Foster Seeks a *Variance* from Table 19-A to permit the construction of a deck approximately 4 feet from the property line where a minimum of 10 feet is required.

Location: 24 Vernon Avenue, Map 110 Lot 30 in the Residential-1 Zone.

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

A motion was made by Mr. Powers to continue case Z-23-62 59 to the January 10, 2024 meeting as requested. Ms. Zimmerman seconded. The motion carried unanimously by a voice vote.

6. New Cases:

Z-23-60 Michelle and Scott Brochu Seeks a *Special Exception* from Table 18-D and Section 20.2.B to permit a contractor's storage yard.

Location: 20 Crown Point Road, Map 235 lot 1 in the Agricultural Zone.

Applicant Michelle Brochu explained they've had a roofing company at their home location for the past 18 years and they're just trying to get it classified as an existing contractor storage yard. It's agriculturally zoned. It's set way back off the road. They would use the space, as they have been for the last 18 years, for keeping their trucks there as well as equipment like ladders and things they need for roofing. They keep some of the equipment inside a shop. There's not a lot of traffic coming in and out, so it's not affecting anything. And you can't see anything off the road.

Ms. Brochu read the Special Exception criteria. She said the specific site is an appropriate location for the proposed use or structure because it is located at 20 Crown Point Road on the outskirts of the city. No new structures are proposed. All activity will take place in or on existing structures. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because there are no hazardous materials or acts involved. Any handling and transfer of goods is completely screened from the road and abutters.

There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking because the driveway has existed in excess of 18 years. There is no pedestrian activity this far out on Route 202A.

Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use or structure because there are no proposed structures. All activity takes place in the existing barn and yard area.

The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan because it meets all conditions and criteria required in article 275-20.2. A very dense tree and shrub buffer provide a complete screening from the road and abutters.

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

Ms. Saunders explained that this use is allowed, but by special exception. Part of the requirements are certain setbacks that include all materials, stockpile areas and structures need to be 25 feet from the property line. All equipment must be parked 15 feet from the property line. The aerial photo shows they are close. They have suggested that some of the structures that are called out on the site plan do meet that requirement. She suggested making it a condition of approval going forward that any additional structures, equipment and stockpiles meet those setbacks.

Mr. Spector closed the public hearing.

A motion was made by Mr. Powers to approve case Z-23-60 with the condition that any new structures, equipment and stockpiles meet setbacks. Mr. Foster seconded. The motion carried unanimously by a roll call vote.

Z-23-61 Daniel LaGrange Seeks a *Variance* from Table 19- to permit a 2-Lot subdivision where one lot will have less than the required frontage and both lots would have less than the required minimum lot size. **Public Hearing**

Location: 57 – 59 Cross Road, Map 205 Lot 34 in the Agricultural Zone.

Brett Allard with Shaughnessy Allard, the attorney for Daniel LaGrange, presented the case. He explained the lot is about 1.22 acres and has 119.6 feet of frontage on Cross Road and 247 feet of frontage on Stacy Drive. Mr. Allard said lot currently has a two-family duplex and two sheds that are all situated on the very southerly side of the lot on the Cross Road portion. There is an existing driveway access via Cross Road that serves that property, which is on municipal water and a

private septic. What they're proposing is a two-lot subdivision with proposed Lot 34 and proposed Lot A. Proposed Lot 34 is the southerly lot that will retain the existing dwelling sheds and curb cut access. That will remain a corner lot. If the subdivision is approved, it will have .62 acres, almost 27,000 square feet. It will retain its existing 119.6 feet of frontage along Cross Road. It will have 97.97 feet of frontage on Stacy Drive, with the balance of 247 and change being dedicated to that northerly proposed Lot A. Proposed Lot A will have .60 acres, 150 feet of frontage on Stacy Drive, and the new curb cut driveway access would be off of Stacy Drive. So, there wouldn't be a situation where they have two driveways, both on Cross Road, too close to each other.

Mr. Allard said one of the three variances they are requesting tonight is to allow proposed Lot 34 to retain 26,872 square feet of area where 45,000 is required because that is a two-family on municipal water but not also municipal sewer. The zoning ordinance also requires minimum lot size of 30,000 square feet, 15,000 less than two families for single family dwellings in the agricultural district that are on municipal water but not also municipal sewer.

The second variance they are requesting is for proposed Lot A to have 26,191 square feet of area where 30,000 is required.

The third and final variance is for frontage. The zoning ordinance requires 150 feet of contiguous frontage for lots that are improved with a two-family dwelling in the agricultural district. Proposed Lot 34 has 217.57 total feet of frontage, but 120 or so of that is on Cross Road and 98 feet of that is on Stacy Drive. You cannot cobble together frontages on multiple public streets to satisfy the minimum frontage requirement. So, they are asking for proposed Lot 34 to retain its 119.6 feet of frontage where 150 feet is required. Proposed Lot A up to the north is fully compliant with frontage requirements. They were able to give that lot 150 feet of frontage, which resulted in a little jog as you approach the road. But it was the most zoning compliant way to draw that line.

Mr. Allard read the Variance criteria into the record. He said granting the variance would not be contrary to the public interest and will be consistent with the spirit of the ordinance. For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates basic zoning objectives. There is no alteration to the essential character of the area. The existing two-family dwelling and the proposed single-family dwelling are both permitted by right in this zone. They are both consistent with the character of the area, which is primarily, if not exclusively, residential. The spirit of minimum lot size and frontage requirements are essentially to minimize overcrowding and congested development, ensure that lots have sufficient buildable area, and sufficient area for sanitary facilities. Both lots are serviced by town water, so it isn't a situation where they need to be concerned with adding a well in the 75 foot well radius that comes into play there when you're also on septic. So, they do have adequate land in that regard. They also have adequate land for a second septic system on proposed Lot A. There are no wetlands on this lot. It's 100% dry upland. That existing curb cut is to remain on Cross Road. There is sufficient space for a new curb cut on Stacy Drive around the corner. It is beneficial to have a new curb cut that is not on the same street as the existing curb cut.

If the variances are granted, these lots will remain similar in size or larger than most other lots in the area. There will also be no threat to public health or safety, no adverse impacts to public rights, and no congestion or overcrowding.

Granting the variances would do substantial justice as they balance private rights. They don't see any injury to the public if the variances are granted or gain to the public if they are denied. There would only be a loss to the applicant since these lots will be larger in size than the others in the area.

The value of the surrounding properties will not be diminished. The property will remain consistent with the residential nature of the area such that there's no adverse impact to the surrounding property values. There are no proposed external changes to proposed Lot 34. The two-family is already there. The infrastructure is already there. They're going to remain in their current footprints. The only proposed future change would be a single-family home on proposed Lot A, which fits

entirely within the building envelope. There is also plenty of frontage for that new curb cut on Stacy Drive. They are not seeking to build any new structures and setbacks closer to any abutters than would otherwise be allowed such that their values could potentially be compromised. This would have to go to the Planning Board for subdivision approval, who, even if the variances are granted, would also take a close look at this. They don't think the values of surrounding properties will be diminished.

Unnecessary hardship. This property has several special conditions that distinguish it from others in the area. It's much larger than other properties in the area, which is probably the most important special condition when you're considering a variance request for a subdivision. The existing lot is 1.22 acres. The tax map shows ten developed residential lots with driveway access on Cross Road in the vicinity of the property east of the Spaulding Turnpike overpass. None of them exceed 0.69 acres. Again, we have 1.22 acres. This lot abuts the state highway right of way, so there are not any lots on Cross Road west of this property. There are seven lots with driveway access on Stacy Drive to the north of this property. None of them exceed .65 acres. In fact, most are smaller. This property looks like a double or triple lot compared to others in the area. It's also unique in that it's a corner lot with frontage on two public streets and abuts a state highway.

The Chair opened the public hearing. There was no one from the public present to speak, so the Chair brought the discussion back to the Board.

Ms. Saunders agreed with Mr. Allard that this is one of the largest lots in the area, so it is different from all the other lots that do not meet the zoning ordinance. So, if the Board wanted to make an affirmative decision, that would meet the hardship criteria.

The Board deliberated the criteria. Mr. Powers pointed out that a large lot is not really a hardship. It's kind of a positive. It's a hardship to get more lots out of it that don't meet the zoning. It seems like the opposite of normally what they come up against.

Ms. Saunders explained the definition of hardship is characteristics of the lot such that it's different from the other ones in the area. So, it may not meet the conventional hardship criteria, but it has to meet the State's definition. So, unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area.

Ms. Zimmerman said in reading the criteria of hardship, it could fit. She thinks it could go either way, that there is a hardship because it is a large lot. She went on to say, if he divides it, there will now be another housing in Rochester, which we are lacking.

Mr. Allard elaborated on the hardship criteria by saying the standard for meeting hardship under RSA 674.33 is owing to the special conditions of the property, there's no fair and substantial relationship between the purpose and application of whatever that requirement is that we're seeking a variance from. So, it's a convoluted test and tough to wrap your head around. The first thing is you look at the special conditions that distinguish it from others in the area. When you're looking at a subdivision, you need to have enough area that it's still going to work after it's done. The special condition is this lot is much bigger than others in the area. That's what distinguishes it from the others in the area. It is unique in the neighborhood in that regard.

Mr. Allard went on to say the second prong of the hardship analysis is owing to those special conditions there's no fair and substantial reason to enforce the lot size and the minimum frontage requirements here. So, you must look at the purpose of lot size and frontage requirements. It's to prevent overcrowding and congested development. If those purposes are not threatened if the variance is granted, because of the special conditions that the lot is so much bigger than others in the area, then that is a hardship in that there's no fair and substantial reason to apply these provisions under these circumstances given the uniqueness of this lot.

Mr. Spector closed the public hearing.

The Board continued to deliberate the criteria. Ms. Zimmerman stated the subdivision will not harm the public and that it's going to fit into the neighborhood. She added that a new house is going to bring values up.

Mr. Powers stated that he agreed with Mr. Allard that the reason for the zoning is overcrowding and lot sizing, but it is also for the well and septic. He pointed out plan shows a 4k for the septic, and asked why it doesn't show it on the bottom lot.

Mr. Spector opened the public hearing again.

Ms. Saunders asked if the existing structure is also on septic. Mr. Allard replied yes.

Ms. Saunders asked Mr. Allard if he knows where the septic is located. Mr. Allard replied that it's right behind the house.

Mr. Powers said it's supposed to have an allotted area and that it doesn't show it on the plan. If you look at the allotted area for the second lot, you couldn't even fit that in the first lot.

Mr. Allard asked if the 4k area must be entirely within the building envelope or if it could be within setbacks as well. Ms. Saunders explained septic systems are approved by the State. So, while it doesn't need to meet the Zoning Board's setback, she is not sure what the State's requirements are.

Mr. Spector asked Ms. Saunders if they could get an answer to the question. Ms. Saunders said she would reach out to the Building Department and the Department of Public Works to get an answer.

The Chair suggested this be postponed until they get an answer.

A motion was made by Mr. Powers to continue case Z-23-61 to the January 10, 2024 meeting in order to get an answer from Staff regarding the existing septic system. Mr. Foster seconded. The motion carried unanimously by a voice vote.

7. Other Business

Ms. Saunders said the Planning Board holds their retreat in January and they would like to hold another joint meeting again this year with the Zoning Board on January 22, 2024. Ms. Saunders said she will provide more details once everything is finalized.

8. Adjournment:

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

Respectfully Submitted,

Crystal Galloway
Planner I

and

Shanna B. Saunders,
Director of Planning & Development