

City of Rochester Zoning Board of Adjustment

Wednesday November 8, 2023

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on December 13, 2023)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

Michael King

Members Absent

Matthew Winders, excused

Stephen Foster, excused

Alternate Members Present

Brylye Collins

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 <http://www.rochesternh.gov/> 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 Mr. Lance Powers, Mr. James Connor, Mr. Michael King, Ms. Zimmerman for cases Z-23-48 and Z-23-49, Ms. Collins for cases Z-23-54 thru Z-23-59, and himself.

4. Approval of Minutes:

A motion was made by Mr. Connor and seconded by Mr. Powers to approve the minutes from the October 11, 2023 meeting. The motion carried unanimously by a voice vote.

5. Continued Cases:

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 12/13/2023 meeting.***

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

The applicant requested a continuance to the December 13, 2023 meeting to allow the Conservation Commission adequate time to review the application.

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. ***Continuance Request to the 12/13/2023 meeting.***

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

The applicant requested a continuance to the December 13, 2023 meeting to allow the Applicant to redesign the application per Con Com input.

A motion was made Mr. Powers to continue case Z-23-48 and Z-23-49 to the December 13, 2023 meeting as requested. Mr. Connor seconded. The motion carried unanimously by a voice vote.

6. New Cases:

Z-23-54 Barbara Mills Seeks a *Variance* from Table 19-A to permit construction of an addition into the side setback.

Location: 19 Kinsale Drive, Map 106 lot 12-2 in the Agricultural Zone.

Ms. Mills read the variance criteria. She said granting the variance would not be contrary to the public interest because she has owned the property for 20 years and no one has ever tried to use the land because it abuts with the the pond and there are two entrances. The spirit of the ordinance would be observed because the land would be taken care of instead of letting it get overgrown. Substantial justice would be done because the upkeep to the land would only enhance the value of the surrounding abutters land, making the neighborhood more enjoyable. The values of the surrounding properties would not be diminished because keeping the land cleared would distinguish the pond boundaries, making it beautiful and adding an addition could only add value to the neighborhood. Denial of the variance would result in an unnecessary hardship because it is the only part of the house she could add an addition on to. The additional bedroom entrance would come from the inside of the house. The proposed use is a reasonable one because no one else uses the land as it abuts the pond and has other entrances.

Mr. Spector opened the public hearing.

Mr. Josh Scotton, 49 Kinsale Drive, stated that the land is not used by other surrounding properties and that he supports Ms. Mills receiving a Variance for her proposed expansion into the setback.

Ms. Saunders said a variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance 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. There are no unique or special characteristics of the property that make it different from any other property in the zoning district.

Ms. Saunders further explained the GIS seems to be quite off for this neighborhood. Rather than looking at GIS, please refer to the Foundation Location Plan for proper dimensions. Also, the applicant submitted a petition from the neighborhood because at first staff thought there may be an encroachment into the open

space and there is no Home Owners Association to give permission, however it does not appear that the addition will encroach if we use the Foundation Location Plan for dimensions.

The Board deliberated the criteria, citing that there was no alternate location on the property to put the addition.

A motion was made by Mr. King to approve case Z-23-54 citing all criteria has been met, as cited by the applicant . Mr. Powers seconded. The motion carried by a roll call vote with Mr. Powers opposing.

Z-23-55 GSG Rochester Propco, LLC (d/b/a Granite State Bingo) Seeks a *Special Exception* from Table 18-C to permit a Food Stand in the Highway Commercial zone.

Location: 7 Milton Road, Map 222 Lot 94 in the Highway Commercial Zone.

Ms. Monaghan read the special exception criteria. She said the site is an appropriate location for the proposed use because the intent is to park the food truck against the side of the outparcel building, facing the mall. This would be in front of the current dumpster location, out of the way of fire lanes and traffic and would be a convenient location for bingo customers. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the lunch truck would not interfere with traffic or accessibility to any of the neighbors. There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because the lunch truck parked against the bingo hall is far enough away from current businesses to not hinder car or foot traffic coming or going from their locations. Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use because the lunch truck is 100 percent self-contained. No power, water, or sewer is needed for the use. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because the purpose of having a lunch truck on site is to help property accommodate the food needs of the bingo players that come to play each week. Having more choices of food and easier accessibility to the hall will provide an enhanced experience. The bingo hall currently is servicing approximately 600 players per week.

Mr. Spector opened the public hearing.

Ms. Barbara Mills, 19 Kinsale Drive, stated she is a patron of the Bingo Hall her support and preference for a food truck for the patrons of the Bingo Hall.

Ms. Saunders explained the Board previously approved a food truck for this location in 2012. She went on to say the proposed location will not work because of Fire Department setbacks i.e. fire lane issues, as well as dumpster access. The applicant will need to relocate the truck into parking spaces instead of in the aisle ways, so it doesn't interfere with vehicle movements, including dumpster access.

Ms. Saunders said staff feels the applicant meets the special exception criteria.

The Board deliberated the criteria.

A motion was made by Mr. Powers to approve case Z-23-55 citing all criteria has been met with the condition that the location of the truck be approved by the Fire Department and that the Special Exception is approved for 1 year, as this Bingo Hall location is only temporary. Mr. Connor seconded. The motion carried by a unanimous roll call vote.

Z-23-56 Craig & Jessica Hossfeld Seeks a *Special Exception* from Section 20.2.F(4) to permit a barn structure used to house animals closer than the required 100' and 150' from an abutting property line.

Location: 55 Gear Road, Map 258 lot 55 in the Agricultural Zone.

Christopher Berry of Berry Surveying and Engineering present the special exception application to allow an existing barn to be used for the purpose of housing a small number of farm animals which is closer than the required 100' and 150' from an abutting property line.

Mr. Berry read the special exception criteria. He said the specific site is an appropriate location for the proposed use because the lot is located within the agricultural zone, which is appropriate for agricultural uses such as a farm. The existing barn being requested to be used for the purpose of housing animals of all types, is located 53' to the closest abutting boundary corner. The structure has been used for this purpose in the past and has been recently rehabbed in-place for this purpose. Area outside of the existing location contain wetlands and are not well suited for a new barn location. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because the use of the barn within the agricultural zone is not detrimental or injurious. To the contrary, it is encouraged within the master plan and descriptive use of the agricultural zone within the zoning ordinance. Based on the small numbers of animals, the overnight housing of animals within the barn will not be obnoxious or offensive to the neighborhood. The fact that the various animals are within a barn structure overnight poses no additional offence than if they remain in an open pen during the day, which is a permitted use without the need for a special exception. There will not be obstruction or hazard created to pedestrian or vehicular traffic as the result of a barn being located on a farm within the agricultural zone. The proposed use is permitted in the zone, but for the location of the barn and the occupants of the barn in relation to the perimeter boundary. The barn setback requirements are 100' and 150' where the barn exists 53' from the abutting lot corner. Chapter 275-5.4 discusses preservation of farms and the expansion of agricultural activity. The section further discusses excepting agricultural uses from additional buffering requirements. Chapter 275-23.2(3)(a) through (f) allows for a very similar use as a matter of right as an accessory use. The requirements noted within the accessory use noted in this chapter either congruent with the proposed use as a farm or fall under the requested relief sought here.

Mr. Spector asked what the plan was for the manure of the animals. Mr. Berry stated that the quantity of animals is small and that the manure will be collected and spread among the field for fertilization.

Mr. Spector asked if the farm would become a business and welcome customers. Mr. Berry stated that the farm is not a business onsite, but that the animals are used for therapy at another location and the animals may be transferred to and from the property for those reasons.

Mr. Spector asked if there would be an addition to the barn. Mr. Berry stated that there is no barn expansion.

Mr. Spector opened the public hearing.

Ms. Kathleen Kimball, Tolend Road, stated her support for a farm at this location.

Ms. Allyson Larochelle, 48A Trinity Circle, stated that she learned to ride horses and care for animals at 65 Gear Road. Ms. Larochelle stated her support for a farm at this property and stated that the family is known for their care taken with animals and barn maintenance.

Mr. Richard Bell, Jessica Hossfeld's father, gave a history of the property and explained that Jessica was raised on the property with animals and explained the maintenance of the barns care of the animals on the property. Mr. Bell stated his support for a Special Exception to be granted to this property.

Ms. Freya Fisher, Jessica's mother, explained that the land has been used as a farm for animals and crops and stated her support for the Special Exception to be granted to this property.

Mr. Richard Davis, 57 Gear Road, explained his business, property, and family history to the City of Rochester. Mr. Davis stated that large animals are being proposed, not crops. Mr. Davis also stated that he felt horses were previously kept at the property illegally due to the lot being smaller than the standard, until the Lot-Line Revision that was approved by the Planning Board on November 8, 2023. Mr. Davis presented the Board members with photos and emails regarding proposed plans for the property and explained the property layouts

in relation to his house. Mr. Davis explained his opposition to the Special Exception for the property due to his concerns for manure on the property and possible expansion. Mr. Davis stated his preference for the barn being relocated, further from his property. Mr. Davis presented a picture showing the lights from the barn.

Ms. Saunders listed letters of support for the application.

Mr. Berry explained that the Hossfeld's are not opposed to planting a buffer along Mr. Davis' property line. Mr. Berry also stated that there will not be customers visiting the site, but that the animals may be transported to and from the property. Mr. Berry explained that the reason for the Special Exception is for the barn to house animals overnight, not for agriculture, including keeping of animals, which is permitted by right.

Mr. Connor asked how many animals were proposed. Mr. Berry stated that the barn is limiting with only 6 stalls. Mr. Berry stated that the Hossfeld's currently own two cows, and possible two horses in the future.

Ms. Saunders explained that this property is located in the agricultural zone which by right can be used for farming. The applicant received conditional approval before the Planning Board on Monday for a lot line revision to adjust lot size to meet minimum standards. The property and the barn, in its current location had been used as a farm until 2012 per the City's GIS system. The barn was built in 1990. She said staff feels they have met the special exception criteria and recommend the Board impose a condition of approval to install a fence along the abutting property before any animals are brought on site.

The Board deliberated the criteria.

A motion was made by Mr. Powers to approve case Z-23-56 citing all criteria has been met. Mr. King seconded. The motion carried by a roll call vote with Mr. Spector opposing.

Z-23-57 Joshua Scotton Seeks a *Variance* from Section 23.2.A(20) to permit construction of a shed within the side setback.

Location: 49 Kinsale Drive, Map 106 Lot 12-7 in the Agricultural Zone.

Mr. Scotton read the variance criteria. He said granting the variance would not be contrary to the public interest because there would be no disturbance to the neighborhood and the shed would not impede anyone's public right. The spirit of the ordinance would be observed because all other setbacks are met, and the shed meet the essential character of the neighborhood. Substantial justice would be done because there is no harm adding a shed to the property. Values of the surrounding properties would not be diminished because the shed would add value to his and surrounding properties. Denial of the variance would result in an unnecessary hardship because the property is located at the end of a cul-de-sac and is oddly shaped which other lots in the area do not have to deal with.

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 a variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance 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. The fact that the property is located on a cul-de-sac and is oddly shaped may be considered a hardship.

The Board deliberated the criteria.

A motion was made by Mr. Connor to approve case Z-23-57 citing all criteria has been met. Mr. King seconded. The motion carried by a roll call vote with Mr. Powers opposing; to which Mr. Powers later changed his voted and therefore the motion carried unanimously.

Z-23-58 Haley Cahill Seeks a *Special Exception* from Table 18-E to permit a commercial kennel in the highway commercial zone.

Location: 187 Wakefield Street, Map 113 Lot 47 in the Highway Commercial Zone.

The applicant was not present to explain the application. Ms. Saunders stated that staff recommends denying the application without prejudice so that the applicant can return when ready to present to the Zoning Board.

A motion was made by Mr. Powers to deny case Z-23-58 without prejudice so that the applicant can return in the future. Mr. King seconded. The motion carried unanimously.

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.

Mr. Trott read the variance criteria. He said granting the variance would not be contrary to the public interest because the shed design would match the house and will have landscaping around it. The spirit of the ordinance would be observed because the current landowner has agreed to sell the adjacent area and does not object to the shed being placed there. Substantial justice would be done because it would be a garden shed and it would be used to store a lawn mower and garden tools. The value of surrounding properties would not be diminished because the shed would be on blocks and it's not a permanent structure, it would not add value to the property. Denial of the variance would result in an unnecessary hardship because it's only a shed and that is the only area that is dry enough for it to be located.

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 a variance is granted, in part, when a property cannot be reasonably used in a manner that meets the ordinance 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.

She said there are no unique or special characteristics of the property that make it different from any other property in the zoning district. Ms. Saunders stated that staff originally suggested that the shed be built at an alternate location on the property, however it was heard during the presentation that the other land areas on the property are wetlands.

The Board deliberated the criteria.

Mr. Powers suggested moving the placement of the shed away from the setback. Mr. Trott explained that the back of the property slopes down to a swale.

A motion was made Mr. King to continue case Z-23-59 to the December 13, 2023 meeting in order for the Zoning Board to conduct a Site Walk of the property. Mr. Connor seconded. The motion carried unanimously by a voice vote.

7. Other Business/Non-Scheduled Items:

A. Review and Approval of 2024 meeting dates

The Zoning Board reviewed the Meeting Dates for 2024.

B. Other

Mr. Powers stated that he mistakenly voted against case Z-23-57 and wishes to change his vote to approve the Variance.

8. Adjournment:

A motion was made by Mr. Connor and seconded by Mr. Powers to adjourn at 8:27 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development