

City of Rochester Zoning Board of Adjustment

Wednesday April 10, 2024

31 Wakefield Street, Rochester, NH 03867

(These minutes were approved on, 2024)

Members Present

Larry Spector, *Chair*

Lance Powers, *Vice Chair*

James Connor

Matthew Winders

Members Absent

Stephen Foster, excused

Laura Zimmerman, excused

Alternate Members Present

Brylye Collins

Staff: Shanna B. Saunder, *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. Powers, Mr. Connor, Mr. Winders, Ms. Collins, and himself.

4. Approval of Minutes:

A motion was made by Mr. Powers and seconded by Mr. Winders to approve the minutes from the March 13, 2024 meeting. The motion carried unanimously by a voice vote.

5. Continued Cases:

Z-24-12 Matthew Hilgendorf & Michelle Ciani Seek a *Special Exception* from Section 23.2.A(1)(a) to permit a detached accessory dwelling unit.

Z-24-13 Matthew Hilgendorf & Michells Ciani Seek a *Variance* from Section 2.2 to permit a Dwelling, Two Family to no occupy its own individual lot.

Location: 8 Trestle Road, Map 104 Lot 39 in the Residential-2 Zone.

The applicant requested a continuance for both cases to the May 8, 2024 meeting.

A motion was made by Mr. Powers to continue case Z-24-12 to the May 8, 2024 meeting as requested by the applicant. Mr. Winders seconded. The motion carried unanimously by a voice vote.

A motion was made by Mr. Powers to continue case Z-24-13 to the May 8, 2024 meeting as requested by the applicant. Mr. Winders seconded. The motion carried unanimously by a voice vote.

6. New Cases:

Z-24-14 Terri Atwood Seeks a *Special Exception* from Section 23.2.A(1)(a) to permit a detached Accessory Dwelling Unit.

Location: 12 Ford Lane, Map 221 Lot 58 in the Agricultural Zone.

The applicant Terri Atwood explained she has an existing garage she would like to rehab into an accessory dwelling unit for her disabled son.

Ms. Atwood read the special exception criteria. She said the site is an appropriate location because they are using an existing structure that has been there since 1982. They are turning the garage into a one-bedroom accessory dwelling unit for her adult disabled son. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because her sister is the only neighbor. There will not be undue nuisance or hazard to pedestrian or vehicular traffic because there is no traffic where she lives. Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use because RCB builders will be doing the remodel. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because it will be a living space for her son who will be able to assist her with property upkeep.

Mr. Connor asked how many square feet the accessory dwelling unit will be. Ms. Atwood said it will be 704 square feet.

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 to deliberate the criteria.

Ms. Saunders said staff feels the applicant has met the special exception criteria.

The Board deliberated the special exception criteria.

A motion was made by Mr. Powers to approve case Z-24-14 as presented, citing it is not contrary to the public interest, it meets the spirit of the ordinance and the master plan, substantial justice will be done, and it will not diminish values of the surrounding properties. Mr. Connor seconded. The motion carried unanimously by a roll call vote.

Z-24-15 Christopher Towle Seeks a *Special Exception* from Table 18-A to permit an attached Accessory Dwelling Unit off the existing garage.

Location: 494 Portland Street, Map 118 Lot 14 in the Residential-1 Zone.

The applicant Christopher Towle explained he would like to build a 768 square foot accessory dwelling unit off the existing garage for his father.

Mr. Towle read the special exception criteria. He said the proposed use will be a small accessory dwelling that will tie in nicely off the existing garage to provide housing to my father and will look natural to the surrounding area and landscape. The proposed structure will tie in nicely with the existing garage, it would be residential in use and appearance as well as will be far enough away from any current lot lines to not cause any change in runoff or hazard to the surrounding residents or wildlife. The proposed structure would not cause any undue nuisance or serious hazard to pedestrian or vehicular traffic because it will be residential in nature with only enough room for one to two people to comfortably live. As well, the driveway is large with a large entrance on a straight run of current roadway with plenty of off-street parking for the occupants. There is currently water, sewer, electrical, cable and internet, and natural gas lines that run along the street that provide the current home with the necessary utilities. As well, there is a fire hydrant directly in front of the current home. The current home would not cause any unnecessary strain to the infrastructure surrounding it and would have adequate facilities and utilities supplied. As stated, the proposed structure will provide adequate housing for one to two people with the intent of looking natural to the surrounding landscape and keeping with the spirit of the ordinance and master plan. It will never be used for anything other than residential use and would provide a great accommodation for the resident of the dwelling.

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 to deliberate the criteria.

Ms. Saunders said staff feels the applicant has met the special exception criteria. She went on to explain there was a typo on the public hearing notice that went out to the abutters so the Board will need to continue the hearing to the May 8, 2024 meeting to allow proper abutter notification.

A motion was made by Mr. Powers to continue case Z-24-15 to the May 8, 2024 meeting to allow proper abutter notification. Mr. Winders seconded. The motion carried unanimously by a roll call vote.

Z-24-16 Timothy & Lucyana Chapman Seek a *Special Exception* from Table 18-A to permit an Accessory Dwelling Unit.

Location: 58 Franklin Street, Map 119 Lot 72 in the Residential-1 Zone.

The applicant Timothy Chapman explained they would like to create an accessory dwelling unit in the basement of the house for his mother.

Ms. Chapman read the special exception criteria. She said the site is an appropriate location for the proposed use because there is enough space in the basement to make the changes and it will not change the homes footprint. The proposal is not detrimental, injurious, obnoxious, or offensive to the neighborhood because a bedroom, a three-quarter bath, and a kitchen are planned to be added. There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because the footprint will not change, and his parents do not drive or own a vehicle. There will be appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use because the changes include all that's needed to current codes. The proposed use is consistent with the spirit of the ordinance and the intent of the master plan because the home remains single-family and we look forward to building up our community and tightening our bonds with our neighbors.

Mr. Winders asked how big the accessory dwelling unit will be. Ms. Chapman said it will be approximately 766 square feet.

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 to deliberate the criteria.

Ms. Saunders said staff feels the applicant has met the special exception criteria.

The Board deliberated the criteria.

A motion was made by Mr. Powers to approve case Z-24-16 as presented, citing it is not contrary to the public interest, it meets the spirit of the ordinance and the master plan, substantial justice will be done, and it will not diminish values of the surrounding properties. Mr. Connor seconded. The motion carried unanimously by a roll call vote.

Z-24-17 Zachariah Thone Seeks a *Variance* from Table 19-A to permit the creation of a lot with 50-feet of frontage where 150-feet is required, using a “flag lot” configuration.

Location: 632 Salmon Falls Road, Map 224 Lot 12 in the Agricultural Zone.

Christopher Berry of Berry Surveying and Engineering explained the applicant’s property to the Board. He said there is a single-family home with two garages currently on the site.

Mr. Berry read the variance criteria. He said the public interest is providing reasonable development potential without the need for costly municipal infrastructure to maintain as is permitted in multiple sections of the ordinance. This can be found in the provided definition of porkchop subdivision within the zoning ordinance. The 50-foot frontage, which would support the proposed driveway to one single house lot, is substantially the same or a reduced impact to the property, land and abutting landowners as a proposed roadway and therefore the context in which this property falls will not be changed in a marked way if approved by the board. If the variance were granted, the spirit is observed by allowing a reasonable and well-planned subdivision. Though the area requirements of the zone are small, the context of the subdivision is still within the agricultural zone and the proposed parcels created from the subdivision are well suited for the contextual area. The proposal does not create a density that is a burden on the land or the surrounding infrastructure, and though the frontage requirement is not met all other aspects of the space and bulk standards can be met. The proposal is generally in line with a permitted porkchop subdivision and therefore the spirit is observed. Substantial justice in this case is achieved by allowing a second building lot to be constructed on a proposed 2.12-acre parcel of land without the need for costly infrastructure. The gain to the applicant far outweighs any benefit the public receives from having 150-feet of frontage for a potential back lot that is otherwise permitted in the zone. If the variance were granted there is no diminution of property values whereas the proposed use is residential, which is a permitted use in the zone. The proposal has less impact on the land and the project surroundings than other development potentials. If reduced frontages are permitted within the ordinance to allow similar development styles, the frontage requirements, in general, is only a construct for basic space and bulk standards to moderate density within specific zones. The lot width created by the required 150-feet of frontage isn’t required in this case due to the design of the subdivision, and therefore does not create a visual overcrowding of the street, which is discouraged. For this reason, there is no substantial relationship that exists between the specific application on this specific parcel of land. A review of the project site in the context of other properties we find that the parcel is special. Each abutting parcel is either exponentially larger than the subject parcel, which would permit larger major subdivisions, or are too small to be further subdivided or developed. The subject parcel’s size is precisely the reason the porkchop and flag lot ordinances exist and permit 50-foot necks of frontage and therefore is no relationship between the need for 150-feet of frontage and the specifics of this project site. The denial of the variance would be an unnecessary hardship to the applicant based on the special conditions of the land. The ordinance allows for special lots to be subdivided using a 50-foot frontage, however, due to other constraints within the ordinance those provisions either can’t be met or are

not practical. Denial would require the applicant to pursue larger densities which is specifically being avoided through this request. The proposed use is reasonable whereas it is the least impacting alternative that is permitted in the zoning ordinance. One 2.12-acre lot within the agricultural zone that has a reduced frontage and longer driveway is very common and is specifically encouraged within the zoning and master plan. The property is special in its total shape and size in the context of all abutting parcels. Each abutting parcel is either sized in a way that future development could be undertaken through a major subdivision or sized in a way that no further development could take place. This parcel is sized and has adequate frontage for a small back lot subdivision to be created through a reduced frontage, which is encouraged by the ordinance. The property cannot be reasonably enjoyed in this way without the variance and is therefore a hardship to the applicant.

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 to deliberate the criteria.

Ms. Saunders said staff feels the variance is in keeping with the surrounding neighborhood, is in the spirit of the ordinance, and meets the hardship criteria. She said for those reasons, staff recommends approval.

The Board deliberated the criteria. Mr. Winders said he agreed with the City and feels the applicant has met the hardship criteria.

A motion was made by Mr. Winders to approve case Z-24-17 as presented, citing all the criteria has been met. Ms. Collins seconded. The motion carried unanimously by a roll call vote.

Z-24-18 Revival Day of Hope Seeks a *Variance* from Table 18-C to permit a “theater” greater than 5,000 square feet for musical performances in the Office Commercial zone.

Location: 72 Lafayette Street, Map 124 Lot 67 in the Office Commercial Zone.

The applicant Tracy Warren explained part of her nursing career has involved medical mission trips however, when covid hit she was unable to do those missions, so she decided to bring her mission to the community. She said while working at the jail she realized there was a problem a gap in some of the resources when inmates were being discharged. Ms. Warren said in 2021 she developed Revival Day of Hope which is a family festival that was held at the Rochester Common. She explained that she has now created a non-profit which now they are able to conduct outreach programs throughout the year with the main festival being supporting the funds. Ms. Warren said last year’s festival was expected to bring approximately 2,500 people however the event had to be cancelled due to hurricane Lee. She said it caused a huge hardship with finances and the trust of the sponsors. Ms. Warren said this year she applied for a special event permit to hold the event at the Rochester Fair Grounds however the permit was denied due to zoning issues.

Attorney Marcia Brown of NH Brown Law said she represented the Rochester Agricultural and Mechanical Association. Ms. Brown said she helps the Rochester Agricultural and Mechanical Association pro bono and want to help Ms. Warren through the process, as well, to ensure the process is correct and the record is adequately built.

Ms. Brown reviewed the comments from city staff regarding the special event permit submitted by the applicant with the Board. She said the denial of the permit came from Shanna Saunders, which stated “this use is not part of the annual fair or the swap meet that this property is grandfathered for. This is an expansion of use, and is not permitted. A Zoning Board of Adjustment variance is required. Rochester Agricultural and Mechanical Association knows this and has known this for several years now. I am dismayed that they continue to have folks submit applications that they know will be denied. The City is happy to help find an alternate location for this event”. Ms. Brown said she isn’t sure which ordinance she is seeking a variance from based on the comments given. She said she is before the Board ready to speak to the five factors however, she believes it should be an administrative appeal, not a variance. Ms. Brown said her goal is to give the Board sufficient basis to find on either of the two.

Ms. Brown began reading a written statement. She said granting the variance will not be contrary to the public interest because 72 Lafayette Street is zoned as office-commercial. The City's ordinance lists the objectives of the zone according to Section 275-6.4.B(2), allows for large-scale office, institutional, hospitality, and civic uses.

Mr. Spector stopped her and stated that the materials the Board has in front of them is completely different from the statements Ms. Brown is giving. Ms. Saunders said the application that was submitted was for a variance which the Board members received in their packet a week ago. She said the materials in the application are completely different than what is being presented. Ms. Brown said as a lay person Ms. Warren completed a package then reached out to her recently to look at the situation and feels there are some holes. She went on to say there are holes in the denial, there are holes in the application, and she is present at the meeting to fill the holes which is why she brought prepared remarks in order to get them into the record. Ms. Saunders suggested the applicant request a continuance in order to submit an amended variance application to allow the Board sufficient time to review the criteria so they are fully informed with the argument being made and be ready to ask questions. Ms. Brown said there is an opportunity for the public to speak as well and doesn't feel it is any different than what she is presenting. Ms. Brown said she would like to proceed. Mr. Spector said she is welcome to proceed however, the Board did not have the information prior to the meeting so there is a chance the variance could be denied. Ms. Brown said in light of the drama between certain City Officials and the Rochester Fair Association with respect to Twisted Metal which couldn't get approval even though the same event had been held in the past. She said she came prepared for the same treatment, which would be a denial.

Ms. Brown went on to say she feels what Ms. Warren is proposing is permitted. Ms. Saunders said from a staff perspective the Board could hear the case however it would be her recommendation they then continue the case in order to allow the members time to review and process the information as well as the response to the criteria.

Ms. Brown proceeded with her prepared statement saying with respect to public interest, she believes it is in the public interest as it is a permitted use. She said under Section 275-6.4.B(2), allows for large-scale office, institutional, hospitality, and civic uses and is ideally oriented toward campus-type settings. Revival Day of Hope is a large-scale civic use to connect those suffering from homelessness, food insecurity, and domestic violence to the community services they need. This is a large-scale event in that over 1,000 people attended the event in 2022 and more than that were slated to attend in 2023. It is undoubtedly in the public interest and a civic use to connect people with community services they may not be aware of but need. For these reasons, this large-scale civic event satisfies this factor and is a permitted use in the office-commercial district. Revival Day of Hope and the Rochester Agricultural and Mechanical Association request the Board approve this variance, to the extent it is needed for permitted uses.

The spirit of the ordinance is observed because Revival Day of Hope will host vendors promoting wellness, which is a hospital and health club related use. Revival Day of Hope educates people in need about the community services available to them, which is a school and community center related use. Some of the attending vendors are religious groups, which is both a house of worship and spiritual wellness use. Revival Day of Hope is a function and in the event of inclement weather will stake tents, which is a function hall use. For these reasons, the spirit of the ordinance is directly adhered to and observed. Revival Day of Hope and the Rochester Agricultural and Mechanical Association believe this variance factor is met.

Substantial justice is done because connecting homeless, food insecure, domestic violence, and mentally ill with the community services they need promotes justice in our society. Additionally, the uses proposed by Revival Day of Hope are directly within the permitted uses of 72 Lafayette Street. It will cause a substantial injustice and be unconstitutional to deny this permitted use.

Revival Day of Hope will not diminish the value of 72 Lafayette Street or its neighboring property because this use has been conducted on the property in the past. Revival Day of Hope is no different than events held in the past such as Half Moon Sober Festival, Reggae Fest, Gourmet Food, Next Level Church's community event, and Easter Seals of NH community event. All of which were previously held on the property. No one raised that those events diminished area property values. There is no expectation that Revival Day of Hope will either.

Denial of the permit and variance would be an unnecessary hardship because the hurricane winds that forced the shutdown of Revival Day of Hope's 2023 event caused substantial obstacles that Revival Day of Hope seeks to eliminate with using 72 Lafayette Street venue. The event has been held on the Common, however, obstacles include, parking was remote and across a busy street, due to the irrigation system installed in the Common, no staking of tents can occur if inclement weather arises, the event at the Common requires the closure of a street, and the event has caused neighbors to complain about the noise.

72 Lafayette Street is ideal and is the only open, gated venue that offers on-site parking so that attendees do not need to cross a busy street. Because 72 Lafayette Street is gated, the public cannot just wander into the event. 72 Lafayette Street offers the ability to locate music away from neighbors. Past events have been held toward the center of the venue with speakers facing away from Chestnut Street so that the speakers are not directing the music toward neighbors. Tents can also be staked at this venue in the event of inclement weather. Importantly, this venue has electrical power.

Revival Day of Hope was denied a permit by the City and in that denial the City's Planning Department director Saunders stated that the City is happy to help find an alternate location for this event. However, when Revival Day of Hope took the City up on that offer, the alternative venues suggested fell short of Revival Day of Hope's needs. Revival Day of Hope itself conducted a search and found no other venue than 72 Lafayette Street in this City to meet its needs. For that reason, if Revival Day of Hope cannot use this venue, it could suffer the hardship of another planned but cancelled event due to weather as it did in 2023. That is a cost this non-profit cannot afford.

For the above reasons, Revival Day of Hope believes its use is permitted in the office-commercial zone. Alternatively, it believes it satisfies RSA 674:33, I(b) for obtaining a variance. Revival Day of Hope, therefore, respectfully requests the Zoning Board find that this is a permitted use or that granting the variance would not result in diminution of property values; granting the variance would not be contrary to the public interest; denial of the variance would be an unnecessary hardship to Revival Day of Hope; granting the variance would result in substantial justice; and granting the variance is not contrary to the spirit of the ordinance.

Ms. Saunders explained to the board that the variance would be for a particular use on the property and would allow this property to move forward with this use on this property in the future.

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 said the Board should continue this case for the applicant to submit the presentation, so the Board Members are able to review it and consider the criteria.

Ms. Saunders stated the option for an administrative appeal, as mentioned by the applicant is there, the application is available through the website however, the Board is not going to contemplate an appeal unless there is a formal request for one. One was not submitted for consideration at tonight's meeting.

Ms. Warren stated based on the denial of special event permit stating a variance would be needed that is what she submitted. Ms. Saunders clarified that Ms. Brown brought up an administrative appeal a couple of times during her testimony and she wanted the Board to know an appeal application has not been submitted.

Mr. Winders said he is in favor of continuing the case to allow suitable time to review the new application and criteria. He went on to say based on what was read during the meeting and what was originally submitted to the Board he cannot make an accurate assessment.

A motion was made by Mr. Winders to continue case Z-24-18 to the May 8, 2024 meeting to allow the applicant to submit the revised variance application and to allow the Board adequate time to review. Ms. Collins seconded. The motion carried unanimously by a roll call vote.

7. Other Business/Non-Scheduled Items:

Mr. Powers asked how the city will verify accessory dwelling units are owner occupied. Ms. Saunders explained the city does not have a lot of control over the requirement. She said there was a state law passed appropriately five years ago which requires municipalities to allow them no smaller than 750 square feet. Ms. Saunders went on to say there is a proposal this year to increase the minimum size to 1,000 square feet. She added, the new law is contemplating requiring municipalities to allow two accessory dwelling units on every lot.

8. Adjournment:

A motion was made by Mr. Winders and seconded by Mr. Powers to adjourn at 8:01 p.m. The motion carried unanimously.

Respectfully Submitted,

Crystal Galloway,
Planner I

and

Shanna B. Saunders,
Director of Planning & Development