

**Rochester Zoning Board of Appeals
Business Meeting Minutes
February 15, 2024**

Board Members Present:

David Arancio, Thomas Flynn, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

7:15PM Chairman Arancio Called Meeting to Order

Chairman Arancio began by reading the opening statements. The Pledge of Allegiance was then recited.

Minutes:

- Motion to approve Business Meeting Minutes of January 11, 2024 made by Mr. Cutler and seconded by Mr. Costa. Motion passes 5-0 with one (1) abstention (Mr. Flynn).
- Motion to approve Pubic Hearing Minutes for Petition #1201 of January 11, 2024 made by Mr. Cutler and seconded by Mr. Sullivan. Motion passes 5-0 with one (1) abstention (Mr. Flynn).

Old Business: None

Vouchers:

- Motion to approve Vouchers for The Wanderer for re-advertisement of Petition #1202 and Petition #1203, with a total amount of \$120.00 (\$60 per petition) was made by Mr. Cutler and seconded by Mr. Sullivan. Motion passes 6-0.

Correspondence: None

ZBA Administrators Report:

- No ZBA meeting on February 22, 2024.

New Business:

Chairman Arancio clarified that with two Associate Members and five full time members that the actual number needed to have a quorum was three (3) and not four (4) as previously thought. Mr. Cutler reiterated that the quorum may be three (3) but that number needed for a vote is still four (4).

Chairman Arancio then spoke on the ZBA budget for the 2024 Fiscal Year and stated it was not approved due to the ZBA not having placed forward their recommendations. It was agreed that the conversation would be elaborated on at the next meeting.

Motion made by Mr. Sullivan to adjourn business meeting which was seconded by Mr. Spirlet.
Motion passes 6-0 with one (1) abstention (Mrs. Upton). Adjourned at 7:19 PM.

**Rochester Zoning Board of Appeals
Public Hearing Minutes #1202
February 15, 2024**

7:19 PM Chairman Arancio Called Public Hearing Meeting to Order.

#1202

Robert & Christine Thompson, for property located at 24 Bennett Rd, identified on Assessor's Map 44A, Lot 53, who are seeking a Use Variance under the provisions of Chapter 18.10, Section B.3., and Chapter 20.40, F.6., for a one-bedroom in-law apartment, a use not specifically allowed under the By-Laws, and a Variance for the minimum required side setback for the proposed one-bedroom in-law apartment, under Chapter 20.40, Section D.1., of the Rochester Zoning By-Laws.

Chairman Arancio began by reading the petition aloud, including the application, the applicant's supplemental project proposal, the public hearing notice, the Building Department denial sheet and any correspondences from other Boards. He then read the abutter's list out loud and there were none present. Once this was read, the applicant was invited to step forward and speak on his proposed project.

Mr. Thompson stated that his proposal is to build an addition and an "in-law" apartment. He said his house is on a hill which they will get rid of by digging into it to make the new addition's garage at basement level and the one bedroom apartment will be attached to the addition. He stated that originally he and his wife would remain in the main home while his son would move into the apartment. However, his son and his son's fiancée are expecting their first child and so now the applicant and his wife will move into the apartment and his son and his growing family will move into the main house.

Mr. Cutler asked if the applicant had designed the new additions himself or if he had a professional draw them up. Mr. Thompson stated that he had Zenith create the certified site plan but that he himself drew the interior designs. He stated he was an electrician so he was in the trades. Mrs. Upton asked if the home had already existed when he purchased it or if he had it built himself. It was confirmed that it had already existed which also confirmed that this is a pre-existing, non-conforming lot.

There was further discussion on what the applicant was applying for as two of the Chapters and Sections referenced for the Use Variance had similar meanings. The Board agreed on this and to minimize confusion, they look at each section one at a time. Mr. Costa questioned why the applicant wasn't applying for a Special Permit under Chapter 20.40, Sections F.9. Chairman Arancio explained that the applicant applied for what the Building Commissioner stated on the denial letter but that applicants have a right to seek counsel. The ZBA must not overstep that line of being helpful since the burden of proof is the applicant's. The discussion on this topic continued for a short time longer and then Chairman Arancio opened the floor for public

comment. There were no abutters present for this petition and no comment from any member of the public.

Mr. Flynn wondered if the ZBA had the authority to grant a Special Permit or a Use Variance based on the language in the by-laws. It was concluded that if the language on the Public Notice does not specify Special Permit, therefore it cannot be changed during the meeting. The applicant would have to re-advertise. Chairman Arancio requested a short recess until 7:55 PM as Town Counsel was available for a brief call. Mr. Flynn made a motion to take a recess which was seconded by Mr. Costa. Motion passed 7-0. Meeting was then in recess and would resume at 7:55 PM.

7:55 PM Meeting called back into order by Chairman Arancio.

After speaking with Counsel, it was determined that the ZBA would be unable to change it to a Special Permit for a “multi-family” as the language used in the Public Notice stated “in-law” apartment. Many of the board members stated that they have no language for “in-law” apartments and Chairman Arancio confirmed that this is why the applicant was advised to apply for a Use Variance for a “use not specifically allowed” under the by-laws. After further discussion, the board decided to move forward with the Use Variance but with conditions. The applicant’s son, Robert Thompson Jr., who also resides at 24 Bennett Rd spoke and stated he would love to stay in Rochester and raise his growing family within the community as he feels it’s a beautiful and safe town to live and raise a family in. He also implied he would like to stay near his parents.

Chairman Arancio reiterated to the applicant that he has to prove that he meets the three requirements for a Variance. Mr. Thompson spoke about the hill (topography) and the size of the lot (less than 2 acres) which is the standard in Rochester today; making it unique. As for the second requirement, Mr. Thompson stated that with his son, his son’s fiancée and their unborn grandchild, it will be very crowded in the home as it is now. As there were no abutters present and no one from the public speaking out against the petition, the third requirement was satisfied.

Motion to close public comment was made by Mr. Flynn and seconded by Mr. Spirlet. Motion passed unanimously 7-0. Public comment was then closed.

The Board has deliberated and, in accordance with the vote indicated herein below, the Zoning Board of Appeals finds that the Applicant has met its burden of demonstrating those elements necessary to obtain a Variance from the requirements of the Rochester Zoning By-Laws.

The following motion was made by Mr. Flynn and seconded by Mr. Spirlet.

MOTION #1: Grant a Use Variance for a one-bedroom apartment addition as it applies to the property located at 24 Bennett Rd, as shown on Assessor’s Map 44A, Lot 53, from the provisions of the Rochester Zoning By-Laws, Chapter 20.40, Section F.6 and Chapter 18.10, Section B.3; with the following conditions:

1. The petitioner shall comply with all applicable federal, state, and local laws and regulations, including any permitting requirements related to the proposed use of the property.
2. At least one dwelling unit shall be owner occupied.
3. All parking to be on-site.
4. No use of ground stumps as soil supplements.
5. No further expansion.

This Use Variance is to be in accordance with a site plan entitled, "Site Plan to Accompany a ZBA Variance Request," dated December 15, 2023 and drawn by Zenith Consulting Engineers, LLC.

Voting Members:

Thomas Flynn, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

VOTE: 6 in Favor 0 Opposed

Motion passes. ***The Use Variance is thereby deemed granted***

The following motion was made by Mr. Flynn and seconded by Mr. Davis.

MOTION #2: Grant a Variance from the 40-foot side setback requirement on the Southwest side of the property located at 24 Bennet Rd, Assessor's Map 44A, Lot 53, under Chapter 20.40, Section D.1 of the Rochester Zoning By-Laws with the following conditions:

1. The side setback on the Southwestern side shall be no less than 26.3 feet.
2. The petitioner shall comply with all applicable federal, state, and local laws and regulations, including any permitting requirements related to the proposed use of the property.
3. The petitioner shall comply with all conditions imposed by the Board as part of the Variance approval.

This Variance is to be in accordance with a site plan entitled, "Site Plan to Accompany a ZBA Variance Request," dated December 15, 2023, and drawn by Zenith Consulting Engineers, LLC.

Voting Members:

Thomas Flynn, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffery Costa, Michelle Upton

VOTE: 6 in Favor 0 Opposed

Motion passes. ***The Variance is thereby deemed granted***

Rochester Zoning Board of Appeals
Public Hearing #1203
February 15, 2024

8:29 PM Meeting Called to Order by Chairman Arancio

#1203

Michael Walsh, for property located at 405 Neck Rd, identified on Assessor's Map 26, Lot 17, who is seeking a Variance for the construction of a garage greater than 1000 square feet allowed under Chapter 20.40, Section E.2, of the Rochester Zoning By-Laws.

Chairman Arancio began by reading the petition aloud, including the application, the public hearing notice, the Building Department denial sheet and any correspondences from other Boards. He then read the abutter's list with the following abutters being present at the meeting:

1. Andrea King of 425 Neck Rd, Rochester MA 02770
2. Mary McCann of 404 Neck Rd, Rochester MA 02770

Chairman Arancio then opened the floor for the petitioner to describe the proposed project. Michael Walsh came forward and explained he was looking to build a four bay garage to house and store several of his vehicles as well as his boat. Chairman Arancio asked if Mr. Walsh had a business that would be working out of his home or the garage. Mr. Walsh stated no, that it was solely for storage of his personal and recreational vehicles. Chairman Arancio also asked if the garage would be pre-fabricated. Mr. Walsh stated it would not. It would be built to match the house.

Discussion began about the garage being located in the front yard which is prohibited by the by-laws. Most of the board members didn't have an issue with this as the setback of the house from the street is far and there are woods there. However, it is stated in the by-laws and it was not listed as relief sought in the Public Notice. Mr. Cutler voiced concerns that it could be an issue in the future for the applicant. He stated that he would have liked the Building Inspector to have clarified his denial sheet as this relief was not listed. There was discussion on whether the hearing should be continued and obtain Counsel's opinion, or if the petition should withdraw without prejudice and re-apply, specifying the need for relief from accessory structures being located in the front yard. Mr. Walsh stated that the Building Commissioner had told him this the process of going through the ZBA was a formality and that if the garage had been attached to the house, he wouldn't have had to come before the board.

Chairman Arancio agreed that in the future, the petitioner could have a future issue and so he recommended that this hearing be continued and in the interim, speak with the Building Commissioner and Counsel and determine the best course of action. Chairman Arancio, in order to hear from abutters during the initial hearing, opened the floor to public comment.

Mary McCann of 404 Neck Rd. stated that she had no objections to the proposed project.

Andrea King, 425 Neck Rd also stated that she had no objections.

After a brief discussion, a motion was made to continue the hearing until Thursday, February 29th at 7:15 PM by Mr. Cutler and seconded by Mr. Sullivan. Motion passed 7-0.

Mr. Sullivan made a motion to adjourn the meeting which was seconded by Mr. Costa. Motion passed 7-0 and the meeting was adjourned at 8:55 PM.