

Town of Rochester  
Zoning Board of Appeals  
1 Constitution Way, Rochester MA, 02770  
Phone: (508) 763-3871 ext. 125 Fax: (508) 763-4892  
[www.townofrochestermass.com](http://www.townofrochestermass.com)

TOWN CLERK  
APR 4 '24 AM 10:08

#1204

March 28, 2024

### Summary

The following is the decision of the Rochester Zoning Board of Appeals on the petition of Michael Walsh, identified on Assessor's Map 26, Lot 17, Deed Recorded in Registered Land (Land Court) Book 41488, Page 63, who is seeking two Variances for the construction of a garage greater than 1000 square feet to be located in the front yard of the property under Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws.

The petition was heard before the Zoning Board of Appeals at the duly called public hearing on March 28, 2024, at the Town Hall, 1 Constitution Way. After giving all parties an opportunity to present evidence and discuss the case, the Zoning Board of Appeals makes the following findings:

1. Map 26, Lot 17, is located in the Agricultural/Residential district containing 3.63 Acres and 249.86 feet of frontage.
2. The property has been in current ownership since August of 2023.
3. Proposed is to allow the construction of a garage larger than 1000 square feet and to be located in the front yard of the property, under Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws.

### Members present were:

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Michelle Upton

### Documents

Without detailing all of the referenced documents here, the Board hereby notes that it has reviewed the applicable materials presented in connection with the Petition. The Board has further reviewed additional correspondence and materials, including but not limited to:

- An application for two Variances from Michael Walsh to the Zoning Board of Appeals with the following attachments:
  - A site plan entitled, "Plan for Zoning Board of Appeals: 405 Neck Rd in Rochester, MA" dated December 15, 2023, and drawn by Zenith Land Surveyors, LLC.
  - Structural plans entitled, "Permit Set: Structural Specifications", designed by South Coast & Associates, INC.

All of these materials are included in the record of this decision and incorporated herein by reference.

### Testimony

The public hearing began with Chairman Arancio reading the public hearing notice and the application aloud. He then read the abutters list. Abutters present were:

- Jeremie Jones of 403 Neck Rd.

Chairman Arancio advised the petitioner to speak about the intended project. Mr. Walsh stated that they intended to build a garage to house a couple of his antique cars and a pontoon boat. He clarified that there is no commercial business occurring on the property and this was solely personal. He also advised that there will be electricity but no plumbing. The garage would have a vinyl siding to match the residence with cross-walls and placed on a concrete slab.

Mr. Cutler asked the petitioner if the 40' setback would be from the property line to the garage or the gutters of the garage. Mr. Walsh stated it would be from whatever was allowed by the by-laws. Mr. Cutler reiterated that the 40' distance between the property line and the building must include any overhang, such as gutters. Mr. Walsh agreed and stated that he would make sure of this. Mr. Walsh was asked why he could not build the garage on the other side of the home instead of the front. Mr. Walsh said that the other side of his property dips down as a hill and it wouldn't be feasible to build a garage there. The residence is oriented to the side and does not actually face the street, so although the garage would be, technically, in the front yard, it will be on the side of the home. When asked why he cannot build a garage of only 1,000 sq ft, Mr. Walsh replied that it just isn't large enough for what he needs to store in there. The current garage on the property had been altered by previous owners in such a way that it is unusable and the barn on the property is already being used as storage for most of Mr. Walsh's belongings from their recent move to Rochester.

After opening the floor for public comment, Jeremie Jones of 403 Neck Rd. Stated that he is the closest neighbor and would be most affected by the project. He stated he has no issues with the proposed project and understands, having looked at the property when it was on the market, that the land would not permit building the garage on the opposite side of what the petitioner plans. He confirmed there is a drop off of the land on the back end of the property. He also stated the barn was in touch shape and would need a lot of work to be a functional building. Mr.

Cutler reiterated that at a previous hearing for the same project and petitioner that had been withdrawn, two other abutters were present who had also stated they had no issues with the intended project (see minutes for ZBA Meeting of 2/15/2024, Petition #1203).

Mr. Cutler made a motion to close public comment which was seconded by Donald Spirlet. Motion passed unanimously 5-0.

Mr. Cutler remarked that he had no problems with this proposal as the shape and the topography of the lot was unusual. The other board members also concurred with several specifying that since the front set back was quite a distance and that there were lots of trees at that located, it would be relatively well hidden from the road and would blend in. The board also agreed that each hardship was met and as was seen in the previous petition and presently, no abutters were opposed to the new garage.

**Variance #1 Findings:**

The Board has deliberated and, in accordance with the vote indicated herein, 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.

1. There are unique circumstances relating to the shape and topography of the land and the location of the existing structure on the lot, and
2. Literal enforcement of the by-laws would involve substantial hardship, financial or otherwise to the petitioner and
3. The desired relief may be granted without substantial detriment to the public good.

**MOTION #1: Grant a request for a Variance to Michael Walsh, for the 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 larger than 1000 square feet as allowed under Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws, with the following conditions:**

1. The garage cannot be used as a residence.
2. The garage cannot be used to house animals.
3. All related parking to be off-street.

- ❖ This Variance is to be in accordance with a site plan entitled, "Plan for Zoning Board of Appeals: 405 Neck Rd in Rochester, MA" dated December 15, 2023, and drawn by Zenith Land Surveyors, LLC.

**Voting Members:**

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Michelle Upton

**VOTE:**        5 in Favor                      0 Opposed

Motion passed unanimously. *The Variance is thereby deemed granted.*

**Variance #2 Findings:**

The Board has deliberated and, in accordance with the vote indicated herein, 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.

1. There are unique circumstances relating to the shape and topography of the land and the location of the existing structure on the lot, and
2. Literal enforcement of the by-laws would involve substantial hardship, financial or otherwise to the petitioner and
3. The desired relief may be granted without substantial detriment to the public good.

**MOTION #2:** Grant a request for a Variance to Michael Walsh, for the property located at 405 Neck Rd, identified on Assessor's Map 26, Lot 17, who is seeking a Variance for a proposed garage to be located in the front yard of the property under Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws, with the following conditions:

1. The garage cannot be used as a residence.
2. The garage cannot be used to house animals.
3. All related parking to be off-street.

- ❖ This Variance is to be in accordance with a site plan entitled "Plan for Zoning Board of Appeals: 405 Neck Rd in Rochester, MA" dated December 15, 2023, and drawn by Zenith Land Surveyors, LLC.

**Voting Members:**

David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Michelle Upton

**VOTE:**        5 in Favor                      0 Opposed

Motion passed unanimously. *The Variance is thereby deemed granted.*

*Any person aggrieved by this decision of the Zoning Board of Appeals may appeal the decision pursuant of Section 17 of Massachusetts General Laws Chapter 40A. the appeal shall be filed within twenty (20) days after the date this decision has been filed in the office of the Town Clerk or as otherwise provided by law.*

**Variations:**

Variations lapse if not acted upon with one (1) year of the Certified by the Town Clerk and all appeals have been resolved, *and* Variations are not valid until recorded with the Registry of Deeds. A copy of the Registry receipt showing the Book and Page number must be given to the Rochester Building Department in order to apply for a Building Permit. This is the applicant's responsibility.

In the case of a permit for construction, construction must start within one (1) year.

*I, Margie Barrows, Town Clerk of Rochester, hereby certify that twenty (20) days have elapsed since the within decision of the Rochester Zoning Board of Appeals was filed with the office of the Rochester Town Clerk, and further certify that no appeal from said decision has been filed with the office of the Town Clerk.*

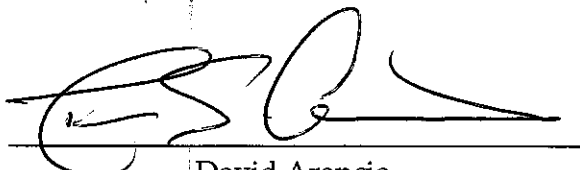
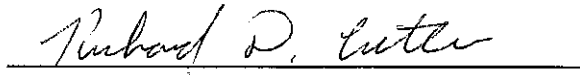
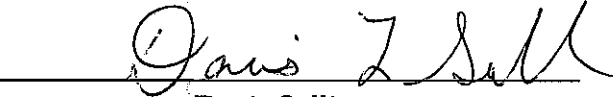


*April 29, 2024*  
Date

*Margie Barrows*  
Town Clerk's Signature

[SIGNATURES ON FOLLOWING PAGE]

Appeal: #1204  
Petitioner: Michael Walsh  
Property Address: 405 Neck Rd  
Map: 26 Lot(s): 17  
Hearing Closed: 3/28/24

Zoning Board of Appeals: Variance #2

- Yes  No  Abstain   
David Arancio
- Yes  No  Abstain \_\_\_\_\_  
Thomas Flynn
- Yes  No  Abstain   
Richard Cutler
- Yes  No  Abstain   
Davis Sullivan
- Yes  No  Abstain   
Donald Spirlet
- Yes  No  Abstain \_\_\_\_\_  
Jeffrey Costa
- Yes  No  Abstain   
Michelle Upton

5 Approve 0 Deny  
Petition (s): Approved/Denied  
(circle one)

The issuance of this special permit/variance does not supersede or nullify the need to meet and/or satisfy the requirements of all other town governing boards relative to this action.

Appeal: #1204  
Petitioner: Michael Walsh  
Property Address: 405 Neck Rd  
Map: 26 Lot(s): 17  
Hearing Closed: 3/28/24

Zoning Board of Appeals: Variance #1

Yes  No  Abstain

  
\_\_\_\_\_  
David Arancio


Yes  No  Abstain

\_\_\_\_\_  
Thomas Flynn

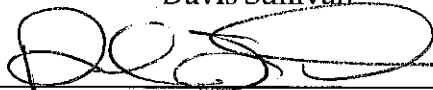
Yes  No  Abstain

  
\_\_\_\_\_  
Richard Cutler

Yes  No  Abstain

  
\_\_\_\_\_  
Davis Sullivan

Yes  No  Abstain

  
\_\_\_\_\_  
Donald Spirlet

Yes  No  Abstain

\_\_\_\_\_  
Jeffrey Costa

Yes  No  Abstain

  
\_\_\_\_\_  
Michelle Upton

5 Approve 0 Deny

Petition is: Approved/Denied  
(circle one)

The issuance of this special permit/variance does not supersede or nullify the need to meet and/or satisfy the requirements of all other town governing boards relative to this action.