

**Rochester Zoning Board of Appeals
Public Hearing Minutes
July 27, 2023**

Board Members Present:

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

7:00 PM Meeting Called to Order by Chairman Arancio

Appeal #1195

Chairman Arancio began by reading the Public Hearing Notice, reviewing the application, and reading the abutter's list. The abutter's present were as follows:

- ❖ Robert and Christine Murphy, 19 County Rd
- ❖ Kevin and Amy Bennett, 9 County Rd

Building Commissioner Paul Boucher was present as well as Town Counsel, Elizabeth Lydon. The applicant, Scot D. Machos, was also present. Chairman Arancio asked Paul Boucher to speak first as the hearing is an appeal of his decision. Paul Boucher stated he received a complaint from the residents at 19 County Rd and after reviewing the complaint and the by-laws he decided the use being conducted at 15 County Rd was not permitted. Chairman Arancio asked him to site the by-law he referenced in the Notice of Violation. Paul Boucher stated it was the Uses under Chapter 20.40, Section E, under "Permitted Uses." When asked if he had anything further, he stated no and that it was all basic.

Chairman Arancio asked Town Counsel if she would like to add anything. She stated that it is in the Board's discretion to decide whether the commercial activity was allowed under the Zoning By-Law or had risen to a level where it was no longer subordinate to the property's primary use as a residence. The Board should consider activity such as commercial vehicles coming onto the property, separate from the residents' personal vehicles, any employees at the site who don't reside on the property, trip traffic or customers coming onto the property.

Board member, Richard Cutler asked the Building Commissioner what exactly was the business that is in non-compliance. Paul Boucher stated that it is a transportation business. He stated that according to the by-law, trades such as carpentry, electrician, etc. are permitted; not uber, taxi or bus. Town Counsel stated that these are examples and are not all encompassing. Counsel also cautioned that if this type of commercial activity, using personal vehicles to conduct business off-site, is not allowed, it can be a slippery slope.

Board member, Davis Sullivan, read the by-law out loud and stated that it seems this use is much like permitted uses where someone may park their work/commercial vehicle at home but leave the property to each day to go to work. Chairman Arancio asked the applicant to explain. Scot D. Machos stated that he felt that he was included in the permitted uses under the by-laws. He continued by stating that the Board, having copies of the titles and registrations of the vehicles, could see that they are personal vehicles with non-commercial registrations. The vehicles have no signage advertising on them and nothing that distinguishes them from any other personal vehicle. Customers do not go to the residence and no equipment for the business is stored at the residence, other than parking the vehicles in the driveway. He

continued by stating that they do not deduct any percentage for taxes for the business and their billing is facilitated by a 3rd party which sends them a 1099 at the end of the year. Richard Cutler asked how many vehicles are at the site and if all the residents are family members. Mr. Machos stated there are three vehicles as there are three people who reside in the home: but only two drivers for the business. Everyone who lives in the home is family. They confirmed that customers contact them directly for transportation; like a private uber. He continued by saying that they do wash and clean the vehicles at the residence.

Chairman Arancio opened the discussion to public comment. The first to speak was an abutter, Amy Bennet of 9 County Rd. She stated that their house is approximately 20-30 feet from the driveway and so they are very close. She stated that they have never heard the appellants coming or going, it does not impede them from being able to enjoy their property nor does it devalue their property. She also stated that her daughter is a Door Dash driver and asked if she would need to have a Special Permit for this. She emphasized that there are a lot of people in town who earn extra money doing this type of work and so this could affect a lot of people. Chairman Arancio asked Paul Boucher as Building Commissioner, about his interpretation of the by-law relating to Door Dash. Mr. Boucher stated that he had no interpretation at that time. When asked if he was implying that Door Dash was a permitted use, Mr. Boucher stated that he did not say that and that he had no comment.

Christine Murphy of 19 County Rd. stated she submitted the complaint and that their driveway faces 15 County Road. She stated that the appellants do advertise and questioned whether all drivers were licensed to drive. She also stated that appellants clean and wash their cars often in the driveway. She also questioned whether one of the vehicles was a rental. She asked Counsel if conducting work away from the home but parking the vehicles on the property is acceptable. Town Counsel stated yes, but again reiterated that the business must not rise to the level where it is no longer subordinate to the primary use, which would be a residence. She also stated that residents are permitted to wash and clean their vehicles on their own properties. Mrs. Murphy stated she could understand Door Dash because an individual would be working for that company and not themselves. She asked if the appellant's insurance company was aware that they were using the vehicles for transportation. She asked Town Counsel if it's appropriate to have noncommercial registrations for cars being used in an obvious business. Counsel stated that their insurance is irrelevant to the issue at hand. Mrs. Murphy stated she sees people going on and off the property but does not know whether they are business related.

Richard Cutler motioned to close public comment which was seconded by Donald Spirlet. The motion passed unanimously 5-0. Michelle Upton spoke about the abutter's complaints, and said she could appreciate the frustration, however, if the abutter has no issue with Door Dash, why do they have an issue with a private transportation business. She stated she hoped neighbors can speak with neighbors, and questioned why this is an issue. She noted that the Appellant has a right to privacy and that many of the complainant's issues are based on assumptions. Member Donald Spirlet agreed and stated he did not see a problem. People have a right to have visitors, and to wash, and clean their vehicles in the driveway and what one does with their insurance is their business. He stated he wished that the Building Commissioner would elaborate more on what the actual violation is. Paul Boucher stated that the use was the issue. Mr. Sullivan stated this was an innocuous home business as they receive a call for service and leave the property to do so. He asked the appellants what kind of vehicles they have. Mr. Machos stated all of their vehicles are hybrids which Davis Sullivan stated helps minimize noise. He continued by stating this is a "by right" allowed use. Richard Cutler agreed as well.

Chairman Arancio allowed Paul Boucher to speak. Mr. Boucher simply stated that he agreed about having a business out of the home but according to the by-law, the use is the important word. The by-law doesn't specify that use. There was discussion on the verbiage of the by-law, and whether the examples listed are exclusive.

A motion was made by Richard Cutler and seconded by Davis Sullivan to overturn the Cease-and-Desist Order issued by the Building Commissioner.

MOTION: That the ZBA overturn the Cease-and-Desist Order issued by the Town of Rochester's Building Commissioner for Appeal #1195 for Scot D. Machos, for 15 County Road, Map 10, Lot 3D.

Voting Members:

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

VOTE: 5 Approve 0 Deny

The motion passes unanimously. The appeal is thereby deemed granted and the Cease and Desist is overturned.

**Rochester Zoning Board of Appeals
Business Meeting Minutes
July 27, 2023**

Board Members Present:

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

7:49 Business Meeting Called to Order by Chairman Arancio

Minutes:

- Motion to approve Business Meeting Minutes of July 13, 2023, made by Richard Cutler and seconded by Davis Sullivan. Motion passed 4-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1194 of July 13, 2023, made by Richard Cutler and seconded by Davis Sullivan. Motion passed 4-0 with one (1) abstention.

New Business:

- Reorganization of the Board
 - Richard Cutler nominated David Arancio as Chairman and Thomas Flynn as Vice Chair. All present Board members in accordance with these nominations.
 - Richard Cutler made a motion to close nominations which was seconded by Davis Sullivan. Motion passes 5-0.
 - Motion made by Richard Cutler and seconded by Michelle Upton to nominate David Arancio as Chairman and Thomas Flynn as Vice Chair. Motion passes unanimously 5-0.

Old Business:

- By-Law Review Committee

Town Planner, Nancy Durfee was present. Town Counsel was also present. Chairman Arancio explained that at the most recent Select Board meeting, the Town Planner had put on the agenda a discussion on the organization of a by-law review committee. Chairman Arancio stated that this was an opportunity to open discussion regarding said committee. The Select Board tabled it for that night but advised the Town Planner to attend the ZBA meeting so that dialogue could be opened.

The Town Planner began by introducing herself and explained that she had already had ideas about amending some of the by-laws. She stated that given her experience in amending by-laws both at regional and local levels and in multiple communities that it must be carefully conducted. She stated

a small, working group would be most appropriate has the central hub between both the Planning Board and Zoning Board of Appeals. She stated that the ZBA should review specific by-laws that they feel must be changed and after discussion within the Board, it should be brought before the working group. There were discussions about implications of forming such a group regarding Open Meeting Laws as well as who can partake in the group. Chairman Arancio stated that when the ZBA discussed the possibility of creating a by-law review committee, there was an overwhelming desire from all Board members to be involved. The Town Planner continued to state that it's best to keep the group small and stated she had already spoken to the Building Commissioner, the Chair of the Planning Board and Thomas Flynn, Vice Chair of the ZBA. Chairman Arancio stated that even he, as Chairman of the ZBA, does not have the ability to decide who would take part in this group.

Further discussion about Open Meeting Laws that may or may not affect any future by-law review committee continued. Town Counsel stated she would need to investigate the matter further to ensure that the process be legally sound.

Richard Cutler made a motion to adjourn the meeting which was seconded by Davis Sullivan. Meeting adjourned at 8:26 pm.