

**Rochester Zoning Board of Appeals  
Business Meeting Minutes  
August 24, 2023**

**Board Members Present:**

David Arancio, Thomas Flynn, Richard Cutler, Donald Spirlet, Jeffrey Costa

**7:15 Business Meeting Called to Order by Chairman Arancio**

**Minutes:**

- Motion to approve Business Meeting Minutes for August 10, 2023, made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1196 for August 10, 2023, made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1197 for August 10, 2023, made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) abstention.

**New Business:**

- Discussion on reciting the "Pledge of Allegiance" at the start of each meeting.

Associate Member Jeffrey Costa stated that he had seen that the Board of Selectman had discussed this topic during one of the meetings earlier this year. Chairman Arancio requested that the Select Board meeting minutes where this was discussed be pulled and that the ZBA wait for a full board to be present in order to discuss this further. He also requested that this item remain on the ZBA Agenda for the next meeting.

**Old Business:**

- By-Law Review Committee:

Chairman Arancio stated that he had been advised by the Town Administrator that the Town Planner was not going forward with creating a by-law review committee and so the ZBA should move forward with its own sub-committee. He then opened the floor for discussion. Richard Cutler stated as the Town Planner was not moving forward with creating a committee that the ZBA should as they have issues with some of the by-laws that have come before them. Arnie

Johnson, Chairman of the Planning Board was also present and was given to floor to speak. Chairman Johnson stated he intends to meet with the Building Inspector, who has drafted a proposed by-law regarding accessory apartments, which will put more standards in place. He continued that after reviewing the draft by-law, it would be appropriate to pass it along to the ZBA for review as they are the Special Permit Granting Authority. He reiterated the importance of the ZBA and Planning Board working together. He continued to discuss that the by-laws should be updated to reflect more modern times in the community as some of the by-laws will not be able to be enforced down the line.

Associate Member Costa asked why the Planning Board and not the ZBA would be writing the first draft of such an amendment? It was explained to him that anyone can propose a new by-law or a change to a by-law, but any amendment must go through the Planning Board eventually, in order to be put before a public meeting and then voted to be implemented. Chairman Johnson explained the entire process from drafting, to being voted on by the Select Board, to a public hearing via the Planning Board. Once this is all done, it would have to go to the Attorney General for a final decision. Chairman Arancio stated that ultimately the Select Board control the warrant. There was a brief discussion regarding the desire of several ZBA members to be involved and Chairman Arancio stated that this would remain on the agenda to be discussed the at the next meeting where all ZBA members were present.

With no further discussion on the matter and no other business items to discuss, Richard Culter made a motion to adjourn the business meeting which was seconded by Jeffrey Costa. The motion passed unanimously 5-0 and the business meeting was adjourned at 7:34 PM.

**Rochester Zoning Board of Appeals  
Public Hearing Minutes  
August 24, 2023**

**Board Members Present:**

David Arancio, Thomas Flynn, Richard Cutler, Donald Spirlet, Jeffrey Costa

**7:35 Meeting Called to Order by Chairman Arancio**

**#1197 (Continued)**

Logan Smith, for property located at 2 Bishop Rd, identified on Assessor's Map 43A, Lot 34, who is seeking a Variance for the 40 ft. minimum side setback of an existing pool shed, under Chapter 20.40, Section E.2., of the Rochester Zoning By-Laws.

John Romanelli of Zenith Land Surveyors and Rebecca Smith, owner of 2 Bishop Rd., were both present.

Chairman Arancio stated the property owner of 0 Bishop Rd, the adjacent, empty lot also involved in this situation was not present as requested at the last meeting. Mr. Romanelli stated that Mr. Wilson could not be present but that he was on board with whatever is needed to fix the situation. Again, it was reiterated to the applicant that this was a created hardship. Mrs. Smith stated that the error by the surveyor created the hardship, not the property owners themselves. Board member, Thomas Flynn, clarified that the homeowners who hired the land surveyor, as the law reads, are equally responsible for the created hardship.

Continuing on, Mr. Romanelli stated he had spoken to an attorney who advised him to move the lot line so that the set back from the pool shed was 10.1 feet instead of 6.1 feet. He also advised that this likely would have to go before the Planning Board in regard to the lot lines. Mr. Romanelli stated that he was aware that if the accessory structure is 150 square feet or less, it can be as close as 10 feet from the lot line, however the shed in question was 200 square feet.

Chairman Arancio asked Mr. Romanelli and Mrs. Smith the basic question of why can't the shed be moved to another location on the property? Mrs. Smith responded by saying that the shed is on a concrete slab and has underground plumbing and electrical. Richard Cutler asked the applicant that independent of all the utilities going in the shed, is there something on the property that would preclude them from moving the shed such as lot lines, rocks, soil conditions, topography issues, etc.? Simply put, if they were going to build the shed over again today, is there another location it can be put in? Mrs. Smith stated that placing the shed in another spot would be very inconvenient as it would be very far from the pool, and it wouldn't be ideal for its purpose. Richard Cutler stated that there needs to be a more substantial reason other than inconvenience and it needs to be related to the lot. Mr. Romanelli mentioned a retaining wall behind the house. Mr. Cutler asked if there are wetlands on the property to which Mrs. Smith

stated no. Donald Spirlet asked about a larger accessory structure on the property near the pool, which also appears to be some sort of shed. Mrs. Smith stated this was the pool house where there was a changing area, a bar and a general place for entertainment. Mr. Spirlet asked why this structure couldn't be used. Mrs. Smith stated that it was built after everything else and to change everything over to that shed now would be extremely inconvenient.

Jeffrey Costa stated the ZBA could not vote on something that does not exist, referring to the lot line changes being presented. Richard Cutler stated that the process would be that the applicant would have to go before the Planning Board to have the lot lines changed first and then they would return to the ZBA to request a Variance. However, it would be difficult to grant that Variance, even after the lot lines have changed, because of the created hardship. Thomas Flynn agreed with this but stated that the applicant may want to speak to a qualified attorney. Massachusetts laws tend to be harsh towards a created hardship. Chairman Arancio reiterated that his previous opinion did not change. He still feels this is an Errors and Omissions claim on the part of Zenith Land Surveyors and that there are methods of remedying this situation without having to go before the ZBA. He then advised the applicant that they could either ask for a continuance or withdraw without prejudice. Mr. Romanelli requested a continuance but asked that instead of the next scheduled meeting if it could be the following meeting on September 28, 2023, as it would give them more than two weeks to come up with a solution.

Richard Cutler made a motion to allow the continuance of the hearing until September 28, 2023, which was seconded by Donald Spirlet. The motion passed unanimously, 5-0.

Thomas Flynn made a motion to adjourn the meeting which was seconded by Donald Spirlet. ZBA meeting adjourned at 7:52 PM.

Approved on 9/28/2023



David Arancio, Chairman