

**Rochester Zoning Board of Appeals
Business Meeting Minutes
Hybrid Meeting
March 24, 2022**

Board Members Present:

Davis Sullivan, Richard Cutler, Kirby Gilmore, Donald Spirlet, Thomas Flynn, Jeffrey Costa

7:00 p.m. Called Meeting to Order

Minutes:

February 10, 2022

- A motion to approve the Business Meeting Minutes of February 10, 2022 was made by Mr. Cutler and seconded by Mr. Costa. The motion passed unanimously (6-0).
- A motion to approve the Public Hearing #1170 Minutes of February 10, 2022, was made by Mr. Cutler and seconded by Mr. Flynn. The motion passed unanimously (6-0).
- A motion to approve the Public Hearing #1172 Minutes of February 10, 2022, was made by Mr. Cutler and seconded by Mr. Flynn. The motion passed unanimously (6-0).
- A motion to approve the Public Hearing #1173 Minutes of February 10, 2022, was made by Mr. Cutler and seconded by Mr. Costa. The motion passed unanimously (6-0).

February 24, 2022

- A motion to approve the Business Meeting Minutes of February 24, 2022 was made by Mr. Cutler and seconded by Mr. Gilmore; Mr. Flynn abstained. The motion passed unanimously (5-0).
- A motion to approve the Public Hearing #1172 Minutes of February 24, 2022, was made by Mr. Cutler and seconded by Mr. Spirlet; Mr. Sullivan and Mr. Flynn abstained. The motion passed unanimously (4-0).
- A motion to approve the Public Hearing #1174 Minutes of February 24, 2022, was made by Mr. Cutler and seconded by Mr. Spirlet; Mr. Sullivan and Mr. Flynn abstained. The motion passed unanimously (4-0).
- A motion to approve the Public Hearing #1170 Minutes of February 24, 2022, was made by Mr. Cutler and seconded by Mr. Gilmore; Mr. Sullivan and Mr. Flynn abstained. The motion passed unanimously (4-0).

March 17, 2022

- A motion to approve the Business Meeting Minutes of March 17, 2022 was made by Mr. Cutler and seconded by Mr. Spirlet; Mr. Flynn and Mr. Costa abstained. The motion passed unanimously (4-0).
- A motion to approve the Public Hearing #1175 Minutes of March 17, 2022, was made by Mr. Cutler and seconded by Mr. Gilmore; Mr. Flynn and Mr. Costa abstained. The motion passed unanimously (4-0).

Board Signature:

Mullin Affidavits were signed for missed hearings:

Appeal #1170 Industrial Tower and Wireless, LLC and

Appeal #1172 Anthony & Mary-Patrice Ruocco

- Kirby Gilmore 2/10/22 hearing (#1172 only; abstained from all #1170 hearings)
- Davis Sullivan & Thomas Flynn 2/24/22 hearings (#1170 & #1172)

Mr. Arancio arrived at 7:06 p.m.

New Business:**#1163 Variance Extension Request, Carl Achorn, 0 Snipatuit Road**

A motion to grant a six (6) month extension of the Variance granted to Carl & Jennifer Achorn on April 22, 2021 for property located at 0 Snipatuit Road, further identified on Assessor's Map 35, Lot 42F, Appeal #1163 was made by Mr. Gilmore and seconded by Mr. Flynn. The motion passed unanimously (6-0)

The original decision was scheduled to expire on April 22, 2022. This extension will expire on October 22, 2022.

**Rochester Zoning Board of Appeals
Public Hearing Minutes
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Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Kirby Gilmore, Donald Spirlet, Thomas Flynn, Jeffrey Costa

7:15 p.m.

#1170

(continued from 1/13/22, 1/27/22, 2/10/22, 2/24/22)

Industrial Tower and Wireless, LLC for property located at 0 High Street, identified on Assessor's Map 19, Lot 5 who is seeking a Special Permit for the construction of a 190-foot monopole style telecommunications facility under Chapter 22.30 Personal Wireless Services Facilities of the Rochester Zoning By-Laws.

Attorney Angley stated that they are requesting a waiver to one hundred feet from the property line, as the tower is over-engineered to fall over onto itself within the one-hundred-foot setback. He noted that they have never had a tower failure and that he feels that the by-law is strict and difficult to comply with, spending a lot of time finding a site that would comply. Attorney Angley noted that most of the abutters would not see the tower, as it is more than 3,000 feet off of the roadway, tucked into woodland. The by-law requires to mitigate, not make it invisible.

Attorney Angley responded to a comment on diminished property values, stating that part of the original filing shows that there will be no measurable impact according to the market data.

Attorney Angley stated that they are in compliance with the Federal and State exposure standards, noting that the Telecommunications Act of 1996 bars local authorities from considering radiation.

Attorney Angley stated that a gap in coverage was proved by Kevin Delaney; the current tower does not extend into this coverage area.

Attorney Angley stated that there will be no impacts on historic structures or views from historic roadways.

Mr. Arancio asked if there was anyone present to stated anything new that has not previously been discussed.

Gary McNeil and Christine Post of 0 & 367 County Road would rather the Board keep the setback at two hundred feet from the property line, as opposed to one hundred feet. They noted that their house is 1,400 feet from the proposed tower, which in their opinion, is too close.

Michelle Upton of 80 Forbes Road commented that the tower is not a necessity. She asked the Board if they have done enough research regarding the information provided at previous meetings about radiation and long-term effects, as the neighborhood is filled with children. Ms. Upton stated that she spoke to physicians and nurse practitioners that told her there is evidence and research about breast cancer becoming more prevalent and feels that the radiation would cause damage to her children; it can't be turned off or limited. Mr. Arancio replied that they have not come to any conclusions as a Board yet.

James and Roberta Ashley of 419 County road stated that they are not abutters, but residents since 1984. They are concerned with interference with other electronics. Mr. Ashley noted that his wife is a Type 1 diabetic; she uses technology to communicate with a pump to take readings in order for her to drive a car. He printed information downloaded from a website and distributed it to the Board regarding electronic equipment 1,100 feet from a tower. The Board noted that the distance to his property is not shown on the plans that they have, as he is not a direct abutter.

Attorney Sean Keough was present on behalf of ADGA Realty, LLC. He stated that his client purchased the property in February of 2022. They didn't enter into the lease option, but intend to honor it, and hope to gain support from abutters.

Sarabeth Morrell of 512 High Street commented that she has three teens at home and fabulous service already.

David Paquin of 114 Pierce Street stated that he feels that the real reason that they are applying for a reduction in the setback requirement is to avoid wetlands. Tyler Paquin stated that he has been employed by a cranberry company for many years and will not work for them anymore if the tower is approved.

Attorney Nagle stated that he represents nineteen (19) of the abutters opposed to this project. A petition was circulated and fifty-four (54) signatures were obtained; a copy was given to the Board. Mr. Gilmore asked if the signatures have been verified. Attorney Nagle replied that they are not all abutters, but their addresses are listed on the petition. He stated that there are two reasons that the Board should deny this request; (1) it is an Industrial structure in an Agricultural / Residential area, and (2) it doesn't comply with the Town By-Laws. He reiterated the resident's concerns regarding medical devices, and noted that the Paquin's work on bogs that have an internal bog road in the fall zone of the tower.

Attorney Nagle discussed sighting and the requested waiver, stating that in order to grant a waiver, it has to be for safety or to improve views, not just avoiding wetlands and the Rivers Protection Act. He doesn't feel that the Board has the authority to grant the waiver.

Attorney Nagle noted that they have an existing tower at 98 Bowen's Lane, 14 towers within 6 miles, and 21 towers within 9 miles; there are no cell problems in that neighborhood.

Attorney Nagle feels that the abutters don't have the time or expertise to decipher the information provided by the applicant and feels that the Board likely doesn't either. He suggested that the Board hire a peer review consultant at the applicant's expense.

Mr. Flynn asked Attorney Keough if his client knew when he purchased the property that he was subject to this base agreement. Attorney Keough responded that they were aware; there was no ability to break the lease, as it was a contractual obligation.

Mr. Gilmore left the meeting at 8:26 p.m.

Mr. Arancio stated that the by-law is tough for a reason; it is to protect rural areas. He asked Attorney Angley if a beacon is proposed. Attorney Angley replied that there is not, only a whip antenna if needed. Mr. Delaney commented that at the highest point, they tower will be 199 feet, not requiring a beacon. He stated that they would be happy to have that as a condition of approval.

A motion to close the public comment segment was made by Mr. Cutler and seconded by Mr. Spirlet. The motion passed unanimously (6-0). Town Counsel Blair Bailey will be present at the next meeting and will draft conditions for a decision.

A motion to continue the public hearing until April 14, 2022 at 7:30 p.m. was made by Mr. Cutler and seconded by Mr. Flynn. The motion passed unanimously (6-0).

**Rochester Zoning Board of Appeals
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Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Donald Spirlet,
Thomas Flynn, Jeffrey Costa

8:44 p.m.

#1172

Anthony and Mary-Patrice Ruocco for property located at 308 New Bedford Road, identified on Assessor's Map 2, Lot 13A who are seeking a Special Permit under Chapter 20.40, Section F.6. to use the premises as not only a residence, but to establish a Farm Winery (A&M Winery). They propose to specialize in providing specialty dessert wines for wine tastings on site, by appointment, and subsequently providing small batches for weddings and corporate functions conducted elsewhere. The wine is proposed to be prepared, fermented, and bottled on site.

Mr. Ruocco presented an updated site plan to the Board showing present conditions, as requested.

Mr. Flynn asked how many people would be at a tasting at once. Mr. Ruocco replied that there will be nine to fifteen (9-15) people. Mr. Ruocco noted that fifteen (15) cars would be able to fit in the driveway in the event that they each took separate vehicles to the tasting.

The Board discussed hours of operation, deliveries, and signage. Mr. Ruocco stated that he will not have any large trucks delivering to the property other than standard UPS type deliveries. He also noted that he plans to have a small sign at the entrance of the gravel drive lit by a small solar light, as well as a small unlit sign further in on the gravel drive; both within the limits of the Rochester Town By-Laws.

A motion to close the public comment segment was made by Mr. Spirlet and seconded by Mr. Cutler. The motion passed unanimously (6-0).

Mr. Arancio informed the Board that Town Counsel Blair Bailey had drafted some conditions for the Board to review. Discussion ensued among the Board regarding these conditions.

A motion to grant a Special Permit to Anthony and Mary-Patrice Ruocco for property located at 308 New Bedford Road, identified on Assessor's Map 2, Lot 13A, to use the premises as not only a residence, but to establish a Farm Winery (A&M Winery) was made by Mr. Flynn and seconded by Mr. Cutler. with the following conditions:

1. Permit is non-transferable.
2. On premises wine tastings shall be limited to no more than 15 individuals.
3. Hours of operation shall be limited to 11 a.m. to 8 p.m., 7 days a week.
4. Signage shall be limited to an unlit single sign of 9 square feet or less.
5. Commercial deliveries associated with the business permitted herein shall be limited to normal business hours and shall not take place on Sundays or holidays.
6. No further buildings associated with the use allowed in this Permit shall be permitted on site.
7. No customer parking outside of what is designated a "gravel driveway" as shown on the site plan.
In no event shall there be any parking off site.

VOTING MEMBERS:

David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, and Donald Spirlet

VOTE: 5 In Favor 0 Opposed

The motion passed unanimously and the Special Permit is thereby deemed granted.

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Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, Jeffrey Costa

Mr. Spirlet left the meeting at 9:05 p.m.

9:05 p.m.

#1176

Alisha Fitzpatrick for property located at 116 Walnut Plain Road, identified on Assessor's Map 11, Lot 6E, who is seeking a Special Permit under Chapter 20.40, Section F.6. for a hobby kennel of 4 dogs or more, to include kennels in the basement, a grooming space, all for personal use only, and breeding dogs.

A motion to waive the reading of the abutter's list, as no abutters were present, was made by Mr. Cutler and seconded by Mr. Costa. The motion passed unanimously (6-0).

Ms. Fitzpatrick was present to discuss the project. She stated that her intent is to have 6-8 personal dogs and to breed once per year for competition and sport; the dogs are health tested. Grooming will be done of her own dogs only. Presently, she has one dog that is retired, one that can breed, and two that are too young; one of the dogs is under six months of age. There is typically a waitlist for her German Shepherds puppies. The cost of the litters basically just pays for feeding the dogs.

Ms. Fitzpatrick noted that the dogs remain in the house if she is not home, and are typically supervised outside when she is there. She plans to have 5' x 5' kennels in the basement with two dogs in each kennel. The dogs do not stay out at night and she is conscientious of barking behavior.

Ms. Fitzpatrick would like to expand the fenced in area shown on the plan, remove trees in the ditch to level and fill, and install a taller fence in the next year. Mr. Sullivan noted that the property is on a busy corner and asked about safety precautions. Ms. Fitzpatrick replied that she is mostly concerned with drivers going into her fence. There is an existing retaining wall and she plans to move more rocks against the fence to protect the dogs.

Ms. Fitzpatrick noted that her neighbor across the street, Amanda Stubbs, had sent her a message stating that she wouldn't have known that she has that many dogs, as she has never heard them.

Mr. Arancio read the correspondence listed above from the Board of Health Director and an abutter.

If granted a Special Permit for eight dogs, Ms. Fitzpatrick stated that she does not plan to acquire them all at once. She plans to get another one next year and the following year, with a total of seven to eight dogs in five years. Puppies are ready to go to homes at eight weeks of age.

A motion to close the public comment segment was made by Mr. Cutler and seconded by Mr. Sullivan. The motion passed unanimously (5-0).

A motion to grant a Special Permit to Alisha Fitzpatrick for property located at 116 Walnut Plain Road, identified on Assessor's Map 11, Lot 6E, under Chapter 20.40, Section F.6. of the Rochester Zoning By-Law for a non-commercial hobby kennel was made by Mr. Flynn and seconded by Mr. Sullivan with the following conditions:

1. A maximum of eight (8) dogs are allowed.
2. Only one (1) litter of puppies per year is permitted.
3. The applicant is required to reapply to the Zoning Board of Appeals within six (6) months to re-evaluate this decision. The filing fee will be waived.
4. A privacy fence is to be installed prior to reapplying to the Board.

VOTING MEMBERS:

David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, and Jeffrey Costa

VOTE: **5** In Favor **0** Opposed

The motion passed unanimously and the Special Permit is thereby deemed granted.

A motion to adjourn at 9:35 p.m. was made by Mr. Costa and seconded by Mr. Sullivan. The motion passed unanimously (5-0).

Respectively submitted,



Patrice Braz, Board Administrator



David Arancio, Chairman