

**Rochester Zoning Board of Appeals
Business Meeting Minutes
Hybrid Meeting
April 28, 2022**

Board Members Present:

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

7:00 p.m. Called Meeting to Order

Minutes:

- The business meeting and hearing minutes of March 24, 2022 are not typed yet and will be voted on at a future meeting.

A motion to close the public meeting at 7:11 p.m. was made by Mr. Costa and seconded by Mr. Arancio. The motion passed unanimously (6-0).

**Rochester Zoning Board of Appeals
Public Hearing Minutes
Hybrid Meeting
April 28, 2022**

Board Members Present:

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

7:15 p.m.

#1177

Greenwood & Sharon Hartley for property located at 149 Marion Road, identified on Assessor's Map 8, Lot 17C who is seeking a Special Permit for an addition for conversion to a multi-family dwelling, a Variance of the lot size requirement, and a Variance to allow an increase in the structure floor area to exceed 30%, under Chapter 20.40, Section F.9.a. of the Rochester Zoning By-Laws.

Greenwood Hartley was present in person.

Mr. Arancio read the certified abutter's list; there were no abutters present.

A motion to waive the abutters list at 7:18pm was made by Mr. Gilmore and seconded by Mr. Spirlet. The motion passed unanimously (5-0)

The public comment segment was opened at 7:28 p.m., however, there were no comments.

Mr. Hartley stated, himself and his wife are in their 70's and they wish to remain in Rochester for the remainder of their lives. In order to do so they are asking the board to approve their application so they can take down their existing detach garage and, rebuild a living space big enough so they can maneuver wheelchairs and other assisting equipment if needed to get around. Their Daughter along with her kids and husband, will move into the main home on the lot and help care for them, they would like for this living space to be on ground floor as their bedrooms are on the second floor in the main home now. Seeking another place to live would be a financial hardship.

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

MOTION #1: Grant the request for a Variance for Appeal #1177 to Greenwood & Sharon Hartley for property located at 149 Marion Road, Assessor's Map 8, Lot 17C, for an increase in the structure floor area, as

- a) there are unique circumstances relating to shape, topography, or soil conditions of the land (or the character of the existing building) such as the shape and size limitations of the pre-existing lot which was previously in compliance with the past by-laws, and
- b) literal enforcement of the by-law would involve substantial hardship, financial or otherwise to the petitioner, and
- c) the desired relief may be granted without substantial detriment to the public good.

This Variance is to be in accordance with a site plan entitled, "Proposed Addition" drawn by John L. Libby Consulting, Inc. dated February 25, 2022 and most recently revised on March 10, 2022 as filed with the Zoning Board of Appeals.

VOTING MEMBERS:

David Arancio, Kirby Gilmore, Thomas Flynn, Jeffrey Costa, Donald Spirlet

VOTE: 5 In Favor 0 Opposed

Motion passed 5-0; the Variance is thereby deemed granted.

MOTION #2: Grant the request for a Variance for Appeal #1177 to Greenwood & Sharon Hartley for property located at 149 Marion Road, Assessor's Map 8, Lot 17C, of the lot size requirement, as

- d) there are unique circumstances relating to shape, topography, or soil conditions of the land (or the character of the existing building) such as the shape and size limitations of the pre-existing lot which was previously in compliance with the past by-laws, and
- e) literal enforcement of the by-law would involve substantial hardship, financial or otherwise to the petitioner, and
- f) the desired relief may be granted without substantial detriment to the public good.

This Variance is to be in accordance with a site plan entitled, "Proposed Addition" drawn by John L. Libby Consulting, Inc. dated February 25, 2022 and most recently revised on March 10, 2022 as filed with the Zoning Board of Appeals.

VOTING MEMBERS:

David Arancio, Kirby Gilmore, Thomas Flynn, Jeffrey Costa, Donald Spirlet

VOTE: 5 In Favor 0 Opposed

Motion passed 5-0; the Variance is thereby deemed granted.

MOTION #3: Grant a Special Permit for Appeal #1177 to Greenwood and Sharon Hartley for property located at 149 Marion Road, Assessor's Map 8, Lot 17C, for a Special Permit for an addition and conversion to a multi-family dwelling, there being no undue nuisance, hazard, or congestion which will be created, that there will be no substantial harm to the established or future character of the neighborhood nor of the Town, and issuing the Special Permit is in harmony with the general purpose and intent of the By-Laws.

This Special Permit is to be in accordance with a site plan entitled, "Proposed Addition" drawn by John L. Libby Consulting, Inc. dated February 25, 2022 and most recently revised on March 10, 2022 as filed with the Zoning Board of Appeals.

Conditions of the Special Permit are as follows:

- One Unit to be owner occupied.
- All parking to be off-street.
- A transfer of the Property to a family trust or similar estate planning vehicle not to impact the intent of the Special Permit.
- Not to be used for commercial purposes except those allowed by right under the by-laws.

VOTING MEMBERS:

David Arancio, Kirby Gilmore, Thomas Flynn, Jeffrey Costa, Donald Spirlet

VOTE: 5 In Favor 0 Opposed

Motion passed 5-0; the Special Permit is thereby deemed granted.

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Public Hearing Minutes
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Board Members Present:

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

7:44 p.m.

#1170

(continued from 3/24/22)

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.

Mr. Gilmore recused himself.

Town Counsel, Blair Bailey was present as well as Attorney Jeff Anglely of Phillips & Anglely, Outside Counsel for Industrial Tower and Wireless, LLC and Attorney Donald Nagle on behalf of abutters.

A motion to re-open public comment was made by Mr. Cutler and seconded by Mr. Spirlet. The motion passed unanimously (5-0).

Attorney Anglely requested to withdraw the applicant's request to re-open the hearing to allow the Board to consider an alternative tower site location with a setback of 200 feet from the interior lot line of Lot 5. The landowner has refused to authorize this location. He stated that there is a gap in coverage and there is no other location in town that can fill this gap; this is why the waiver for the 100-foot setback is requested. The location at the 200-foot setback is at the tree line and the location of the 100-foot setback is well within the tree line and less visible. Attorney Anglely also spoke about safety and moving the tower as far away from people in case it does fall down; noting that they do not, but for safety criteria, it should be far away from people on cranberry bogs; the waiver request accomplishes that. They are asking the Board to approve the waiver because it's reasonable and on balance with both requirements of the by-law.

Mr. Flynn questioned, by their submission, if it's accurate that the alternative tower site location was set at the 200-feet within the interior lot line of Lot 5, that it would fill the gap in coverage. Attorney Anglely replied that it would fill the gap in coverage. Mr. Flynn, asked if this isn't then a self-imposed hardship since the owner will not approve the 200-foot location. Attorney Anglely replied that it's not self-imposed at all, because if Industrial Tower had owned the property, you could say it was self-imposed because they would have been selecting the location themselves but they can't. This location is selected by the landowner himself. They asked ADGA Realty to move to the 200-foot setback location and they refused. Attorney Anglely stated that if the Board feels that there is a better location, then it is up to the Board to tell them where that location is. Mr. Flynn replied that he would tell them that the place to put the tower is at the 200-foot setback from the interior lot line of Lot 5.

Attorney Bailey asked if the owner would agree that the lots will remain in common ownership. Mr. Flynn asked if the owner could take the steps to combine the lots so that there would be no issue of the setback requirement. Attorney Keough responded that his client recently purchased the property and is still considering developing options; it would be too soon to pin to the owner to agree on something today to combine the lots.

A motion to continue the public hearing until Wednesday, May 4, 2022 at 7:30 p.m. was made by Mr. Spirlet and seconded by Mr. Flynn. The motion passed unanimously (5-0). Attorney Angley will email an assent to the continuation from the applicant.

A motion to adjourn was made by Mr. Spirlet and seconded by Mr. Cutler. The motion passed unanimously (5-0).

Respectively submitted,


Mandie Cummings, Clerical Assistant


Patrice Braz, Board Administrator


David Arancio, Chairman