

**Rochester Zoning Board of Appeals  
Business Meeting Minutes  
Hybrid Meeting  
January 26, 2023**

**Board Members Present:**

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

**7:15 p.m. Called Meeting to Order**

**Minutes:**

- Motion to approve meeting minutes for January 12, 2023 was made by Mr. Spirlet and seconded by Mr. Sullivan. Motion passed (4-0) with two abstentions.

**Old Business:**

- The position for the ZBA Administrator has been reposted. Chairman Arancio has discussed with the Town Administrator the issues of staffing shortages.

Motion to adjourn Business meeting made at 7:22 p.m. by Mr. Cutler and seconded by Mr. Costa. Motion passes unanimously (6-0).

**Rochester Zoning Board of Appeals  
Public Meeting Minutes  
Hybrid Meeting  
January 26, 2023**

**Board Members Present:**

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

**7:23 p.m. Called Meeting to Order**

**#1184 (*Continued*)**

**JPF Development, LLC for property located at 0 & 25 Cranberry Highway, identified on Assessor's Map 17, Lots 29, 29A, 30, 31A, 55, 56, whom is seeking a Special Permit to allow the use of a self-storage facility in the Industrial Zone under Chapter 20.40, Section F.6. of the Rochester Zoning By-Laws.**

Mr. Madden is present in person.

**Discussion:**

Mr. Arancio passed copies of the draft decision put together by the Town Council regarding this appeal to all ZBA Board members.

Mr. Cutler posed a question regarding the hours of operation, as it is not listed on the draft decision. Mr. Madden stated that the hours of operation will be 7:00 a.m. to 10:00 p.m., seven (7) days a week. The facility will be staffed from 7 a.m. through 5 p.m., Monday through Saturday. There will be someone on call during after-hours.

**Special Permit Findings**

The Board has deliberated and, in accordance with the vote indicated herein below, the Zoning Board of Appeals finds that the Applicant has met its burden of demonstrating those elements necessary to obtain a Special Permit from the requirements of the Rochester Zoning By-Laws.

***Motion passes (5-0). Special Permit is thereby deemed granted.***

**Rochester Zoning Board of Appeals  
Public Meeting Minutes  
Hybrid Meeting  
January 26, 2023**

**Board Members Present:**

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

**7:35 p.m. Called Meeting to Order**

**#1182 (*Continued*)**

**Matt Dessert on behalf of Robert Murphy for property located at 19 County Road, identified on Assessor's Map 10, Lot 3A, whom is seeking a Variance to construct an 80-foot by 204-foot steel building with 10 separate bays for personal use, which is over the 1,000 square feet that is allowed per Chapter 20.40, Section E.2. of the Rochester Zoning By-Laws and,**

**#1185 (*Continued*)**

**Matt Dessert on behalf of Robert Murphy for property located at 19 County Road, identified on Assessor's Map 10, Lot 3A, whom is seeking a Special Permit to rent a few bays of a proposed 80-foot by 204-foot steel building with 10 separate bays, and to have a trucking establishment on the property with up to 3 employees under Chapter 20.40, Section F.6. of the Rochester Zoning By-Laws.**

Mr. Arancio recused himself of this appeal and meeting given over to Vice Chair, Mr. Flynn.

Petitioners Robert and Christine Murphy are present in person along with their representative, Attorney Jordan Rodrigues. Matt Dessert, the builder of the proposed garage, was also present in person. Abutters present are; Amy Bennet of 9 County Road, Mr. Barboza of 15 County Road, and Mr. Parajuly of 4 Teel Street in Marion and Todd Zell of 2 Teel Street in Marion was present via Zoom.

**Discussion:**

Mr. Cutler advised that they did not close public comments on this petition. Mr. Flynn asked the petitioners to summarize the petitions. Attorney Jordan Rodrigues took the floor on the behalf of Robert and Christine Murphy.

Mr. Rodrigues began by stating the petition is for the construction of a garage that is 80' x 204' (#1182) was originally filed and that subsequent discussion at previous hearings regarding the commercial aspect to be conducted on the property led to the addition petition for a Special Permit (#1185). It has been agreed that both petitions would be discussed simultaneously.

Mr. Rodrigues continued by stating that the proposed garage meets all the setback requirements of 40 ft all around and is below the 20% maximum coverage area of the lot. With the existing dwelling on the lot, the lot coverage will be 11.2% with the new garage. He continued by discussing that although the size of the proposed garage is large, it is not precedent setting. Mr. Rodrigues gave several examples of even larger buildings in Rochester, including examples such as the buildings at Old Colony, the City of New Bedford Water Treatment plant, Goldman Industries, the Rochester Water Department, etc. In regards to the commercial usage of the property, Mr. Rodrigues explained that there are many trucking companies operating in the AR (agricultural/residential) district, including examples such as the Rochester Highway Dept., Decas, Murphy's Auto Salvage, PCC Corp., SM Shepley, Sunny Nook Farms, etc. He stated that the property has ample room for off-street parking, lavatory on site, no hazards for pedestrians or vehicles. He reiterated that the vehicles on his client's property would be stored inside the garage and no longer outside. He continued by stated there would be no nuisance to the area and that they feel it would alleviate a lot of the visual factors that currently exist. The new garage will prevent the neighbor's view of the Salvage yard next door. He stated that the noise that neighbors are complaining about is likely coming from the two new dwellings being constructed behind the property on 19 County Road. There is also work being done on the cranberry bogs nearby as well. There is no store-front and no pedestrian traffic. He ended by stating he feels they meet all the requirements and was open to any questions for the board.

Mr. Cutler stated that some of the large buildings Mr. Rodrigues had used as examples are not in the AR (agricultural/residential) district and some were built before the By-Laws themselves. Mr. Sullivan asked about the number of employees at the site being three (3). Mr. Rodrigues stated that currently his client, Mr. Murphy is the only employee and believes the suggested number three (3) came from the Town Council when reviewing the petition. Mr. Sullivan then asked how many trucks leave and re-enter the property. Mr. Murphy stated it was three (3) trucks and that they leave in the morning and do not return until the late evening. Mr. Flynn requested clarification of the number of employees so as to list this as a condition if the petition were to be approved. It was confirmed that Mr. Murphy, being owner, would not be considered an employee and that an additional three (3) persons could be employed.

Mr. Costa, in regards to the rental of "a few" bays of the garage as per the plot plan, requested clarification of how many bays were intended to be rented. Mr. Murphy stated that 3 bays would be rented. Mr. Rodrigues also clarified that the rest of the bays would be used for his trucking business and for personal use. The consensus was the in the future, there would be a total of 6 trucks using the facility. There were no further questions from the board to the petitioners.

Mr. Flynn now asked that the attorney representing some of the abutters take the floor. Mr. Kennefic began by stating that the petition appears to have gotten worse with the proposed amount of truck traffic that is intended for the property. The introduction of additional trucking companies is going to create a serious noise problem. Mr. Kennefic stated the petitioner is currently operating an illegal trucking company and the proposed garage is to hide these obvious violations. Mr Kennefic introduced some of the abutters so they could give testimony as well.

First, was Mr. Vincent J. Barboza of 15 County Road voicing his concerns. He continued by stating there are trucks coming in and out all day from the property, and these trucks do not

pertain to the petitioners trucking business; and this occurs seven days a week. Mr. Barboza stated he does not want the new garage to be built.

Amy Bennett, 9 County Road, approached to give her testimony. She stated she has previously given testimony and that still stands so she doesn't intend to repeat herself. With that, she has gone over the town by-laws and that Chapter 19, Section 10 titled "Purpose" was a great summary. It states, "To promote the health, safety, convenience, morals and general welfare of its inhabitants, to lessen the danger from fire and congestion, and to improve and beautify the town under the provision of Massachusetts General Laws." Mrs. Bennett stated if the petitioners state the neighborhood would not be affected, she wants to see proof. There are over 30 vehicles, both personal and commercial, on the property that are junk. The number of vehicles salvaged on the property could not even fit in the proposed garage; especially if they plan to use it for their trucking business, race cars and rent to other companies. She continued that the proposed building is vastly larger than allowed by by-laws, there is concern for water and air pollution, congestion of traffic in the area and the well-being and safety of the children and pets in the neighborhood. She is concerned for trees that are being cut down for these purposes as well.

Mr. Suren Parajuly of 4 Teel Street in Marion was on Zoom and requested to speak as an abutter. He stated that they had a section of wooded area behind their property, which abuts the Murphy's property. He stated he noticed they were doing work in that area and he realized that they had placed milling materials such as rocks, sand and stockpiled them there. He stated they use heavy-duty machinery and he can feel his house shake as they do this; and this is nearly daily. He continued by saying he is against this petition.

Attorney Rodrigues voiced his rebuttals of the abutter's testimony. He began with Mr. Barboza's complaint about the large machinery current being used on the property. He stated that the petitioners were using this machinery to level the property. As far as Mrs. Bennett's testimony, no trees were cut on 19 County Road. The petitioners also own the property behind the one in question, where they have taken some trees. In regards to Mr. Parajuly's testimony, Mr. Rodrigues states that again, these materials are on the property located at 0 Mary's Pond Road (behind 19 County Road) and not the property in question. As for the shaking from the machinery being used, this may be from the junkyard next door as his client does not operate any equipment on his property during the day. This concluded his rebuttal.

Mr. Flynn requesting clarification on the trucking business being conducted by the petitioner. Mr. Rodrigues stated that the petitioner has a certificate that is valid for his business. Mr. Kenefic stated that it is merely a certificate that states that the petitioner is DBA (doing business as) RN Trucking but that the operation occurring is illegal.

Mr. Todd Zell, 2 Teel Street in Marion, via Zoom explained that he is concerned that they are separating the business being conducted on the property in question and that of the property they also own in the back (0 Mary's Pond Rd) where they have stockpiled materials and feels that if the proposed garage is built, this will melt into one operation; all of which is illegal. Mr. Flynn reiterated to all parties that the ZBA is voting on the garage and commercial business aspect of

19 County Road and any other issues regarding by-laws at the secondary property will have to be addressed with the town.

After no further testimonies are presented, Mr. Cutler made a motion to close public comment which was seconded by Mr. Costa. The motion passed unanimously; 5-0.

The board began its deliberations on appeal #1182 for the Variance for a garage that is more than the maximum 1,000 square feet permitted. Mr. Cutler stated simply that they are looking for a commercially used building in an Agricultural/Residential district, not a commercial district. Mr. Davis stated with the proposed square footage of the garage is 16, 320 and is intended to house five (5) race cars and three (3) trucks. With that space divided into enough sections to fit vehicles (8' x 20'), it could house one hundred and two (102) vehicles, which is massive even for a commercial enterprise. Mr. Spirlet now spoke, asking Mr. Cutler for clarification because the property is in the AR district, however, there is a junk yard operating next door. Mr. Cutler advised that the junk yard was built prior to the zoning by-laws. The property in question was originally the junk yard but its previous owner, Mr. Murphy Sr., had gone before the ZBA and asked to move the junk yard to the property next door and the conditions to this were that the property now in question, would revert to an agricultural/residential use. Mr. Spirlet continued by saying that although the ZBA has ruled in favor of a slightly larger accessory structure, the proposed 16, 320 square foot garage is just too large for the area.

The board now began their discussions on appeal #1185 for the special permit allowing the petitioner to rent a few bays of a proposed 80-foot by 204-foot steel building with 10 separate bays, and to have a trucking establishment on the property with up to 3 employees. Mr. Costa stated that the business/commercial aspect of the appeal isn't quite clear, given the district they are located in which is agricultural/residential and the fact they have several abutters against the proposed plan, leaves him reluctant. Mr. Sullivan stated that Mr. Murphy has a sizeable property but close abutters, to which the board heard several tonight. They heard the abutters complaints about the truck traffic and noise. It would be difficult to allow this trucking business to increase/expand as it takes away from all the neighbor's abilities to enjoy their own properties. Mr. Flynn summarized stating that it is the duty of the ZBA to determine whether the intended use of the Special Permit is in harmony with the zone in which it is located. Being that the property in question is located in an agricultural/residential and this proposal is certainly a commercial endeavor.

#### **Variance Findings:**

All parties have been provided with an opportunity to present evidence and discuss this matter and the issues associated therewith. The Board has deliberated and, in accordance with the vote indicated herein below, the Zoning Board of Appeals finds that the Applicant has **not** met its burden of demonstrating those elements necessary to obtain a Variance from the requirements of the Rochester Zoning By-Laws.

*Motion denied. The Variance is thereby deemed **not** granted.*

**Special Permit Findings:**

All parties have been provided with an opportunity to present evidence and discuss this matter and the issues associated therewith. The Board has deliberated and, in accordance with the vote indicated herein below, the Zoning Board of Appeals finds that the Applicant has **not** met its burden of demonstrating those elements necessary to obtain a Variance from the requirements of the Rochester Zoning By-Laws.

*Motion denied. The Special Permit is thereby deemed **not** granted.*

Motion to adjourn meeting at 8:38 was made by Mr. Cutler seconded by Mr. Sullivan.