Rochester Zoning Board of Appeals
Business Meeting Minutes
Hybrid Meeting
March 9, 2023

Board Members Present:
Thomas Flynn, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

7:15 p.m. Called Meeting to Order by Thomas Flynn, Vice Chair

Minutes:

- Motion to approve Business Meeting Minutes of November 10, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Minutes of Public Hearing #1184 of November 10, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Business Meeting Minutes of December 8, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

- Motion to approve Minutes of Public Hearing #1181 of December 8, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

- Motion to approve Minutes of Public Hearing #1186 of December 8, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

- Motion to approve Minutes of Public Hearing #1182 of December 8, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

- Motion to approve Minutes of Public Hearing #1185 of December 8, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

- Motion to approve Business Meeting Minutes of December 22, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Minutes for Public Hearing #1184 of December 22, 2022 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Business Meeting Minutes of January 12, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Minutes of Public Hearing #1181 of January 12, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained .
- Motion to approve Minutes of Public Hearing #1187 of January 12, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

- Motion to approve Minutes of Public Hearing #1184 of January 12, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed (5-0). Mr. Costa abstained.

New Business:

- New Administrative Assistant introduced: Andreia Ribas

- Mr. Cutler advised of a meeting at the COA on Tuesday March 7, 2023 about new policies being discussed and implemented regarding access to the new Town Council.

Motion to adjourn Business Meeting at 7:27 p.m. made by Mr. Sullivan and seconded by Mr. Spirlet. Motion passed unanimously (6-0).

Rochester Zoning Board of Appeals
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Board Members Present:
Thomas Flynn, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

7:25 p.m. Called Meeting to Order by Thomas Flynn, Vice Chair

#1174 (*Continued)*

Travis Andrade and Caitlin Vandal of 9 Coombs Road, identified on Assessor's Map 44A, Lot 37, requesting a one-year extension on their Variance which was originally approved on February 24, 2022 by the Rochester Zoning Board of Appeals.

Mr. Andrade was present in person.

Discussion:

Mr. Flynn read aloud the email from the applicant, Travis Andrade, **dated January 26, 2023** requesting a one-year extension as they are having difficulties finding a reliable contractor.

Mr. Andrade simply reiterated that it has been a difficult process finding a contractor. Mr. Flynn asked the board if there were any questions to which Mr. Costa asked if a one (1) year extension was permitted or if the by-laws only allow a six (6) month extension. Mr. Cutler confirmed that six (6) months was permitted under by-laws and asked the applicant if he feels he will be able to find a contractor in six (6) months, to which he replied yes. He stated he already has a possible contractor but wants to be sure he has the appropriate time.

The board discussed this further by stating the six-month extension would begin on February 24, 2023, as this is the date their Variance expired.

Motion passes. The Variance extension was granted.

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Board Members Present:
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7:31 Called Meeting to Order by Thomas Flynn, Vice Chair

#1181 (*Continued)*

Continuation of petition of Erik Zak for property located at 0 Quaker Lane, identified on Assessor's map 38, Lot 16, who is seeking a Variance for the creation of a single house lot which does not meet the minimum frontage requirement per Chapter 20.40, Section D.1., of the Rochester Zoning By-Laws.

Mr. Zak was not present in person or via Zoom. His representative, Attorney Mackey, was not present in person or via Zoom.

Discussion:

Mr. Cutler stated he had a conversation with the Attorney representing the petitioner, advising him of the next meeting for this appeal. Council indicated that they were going to attempt to pursue a different avenue. Mr. Cutler was advised by the Town Planner that the petitioner and his attorney were going to apply for an ANR for the property currently under discussion.

Mr. Flynn asked Mr. Cutler if the petitioner and/or his attorney had advised if they would be withdrawing their appeal with the Zoning Board of Appeals. Mr. Cutler indicated that he did advise the attorney that they would be meeting again on the issue. He continued by saying that there was no indication by the attorney or petitioner of how they would be proceeding.

Mr. Cutler recommended that the Zoning Board of Appeals deny the petition for the variance. Neither the petitioner, nor his attorney have been present for the last two meetings where this petition was being discussed. They, again, did not appear before the board tonight and this petition has been continued several times.

Mr. Flynn then asked anyone present or on Zoom if they wished to speak on the matter. There was no comment.

The Board deliberated and 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 Board of Appeals.

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

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7:34 Called Meeting to Order by Thomas Flynn, Vice Chairman

#1188

Scot D. Machos for property located at 15 County Road, identified on Assessor's Map 10, Lot 3D, who is seeking a Variance under Chapter 20.40, Section E2 of the Rochester Zoning By-Laws, for approval of the construction of a shed less than 10 feet from the rear set back requirements.

The petitioner, Scot D. Machos and the representative for the Life Estate of Jeanette Barboza were present in person.

Discussion:

Mr. Flynn began by reading the list of abutters.

Abutters Robert and Christine Murphy of 19 County Road, were present in person along with their attorney, Jordan Rodrigues.

Mr. Flynn asked the applicant to explain his intent in regards to the petition.

Mr. Vincent J. Barboza, representative of the Life Estate of Jeanette Barboza, began by explaining that they (he and Mr. Machos) had a shed and green house that were kept on their neighbor's property. Those structures have now been moved back onto the property in question. They've purchased a larger shed and they intend to place the contents of the current shed and green house into the new structure and have already contracted the sale of the older shed and green house. Mr. Barboza stated that the location they are requesting to place the new shed makes sense because of the small size of their lot and the location of their septic.

Mr. Flynn confirmed with the petitioners that their petition is to place the new shed 4 ft from the back setback. Mr. Barboza confirmed this, stating that due to the location of their deck, if the shed were to be any closer, they wouldn't have room to access and utilize the back of their property. He further stated that the new shed is 10' x 14' and this would replace their current 9' x 9' shed and the 10' x 12' green house.

Mr. Spirlet questioned the distance between the shed and the house itself, stating that according to the site plan, it looked as though there was ample room. Mr. Barboza stated that the distance is 14ft from the deck to the shed if it is placed where they are requesting. If it is placed any closer, it will only leave about 8' due to the deck stairs, which will not allow any vehicles to park there. Mr. Cutler asked the petitioner why he would need to park his vehicles behind the house. Mr. Barboza explained they have three drivers in the residence and also the driveway extends to the back of the property.

Mr. Flynn asked if any abutters would like to address the petition.

Mr. Jordan Rodrigues, attorney for abutters Robert and Christine Murphy gave each board member photos of the structures currently on the property, including the new shed. He stated that the new shed is already constructed and was temporarily placed in the area as indicated by site plan. He continued by saying that his clients wanted to raise some issues in regards to the placement of the new shed. He stated that all three structures are placed less than the minimum 10 ft setback requirement. Mr. Rodrigues stated that they feel that the requirements for the Variance have not been met. There are no soil, shape or topography issues. The lot is a perfect square. There are no hardships as they already have a shed and green house. Mr. Rodrigues admitted that he had only found out the day of the hearing that the two older structures were being removed and requested that there be a condition in place in regards to the time frame to have them removed. He continued stated that a purpose of the zoning by-laws is to promote open space but that the petitioner's backyard has become congested. His clients have concerns regarding fire hazards. There appears to be power running in the shed via a cord; which they do not know if it was professionally installed.

Christine Murphy said that they drive their vehicles over the septic tank all the time. She also stated she is concerned with fire hazards due to another neighbor who has large bonfires. She stated the firepit is very close to the fence. Although she admitted that the fire issues are from another neighbor, she is concerned because the area they want to place the new shed is located very close to where the embers of the bonfires tend to travel. She stated that the older structures were on her property previously and she did not ask the petitioners to move them. With all three structures in the back yard of such a small lot, it looks very crowded.

Mr. Flynn asked the petitioners if they would like to address their abutter's concerns. Mr. Barboza stated that in regards to the crowded yard, the smaller shed and the green house will be removed and as for the other neighbor's firepit, it is not right up against the fence.

Ms. Upton asked the petitioner if there is power in the shed. Mr. Machos stated the cord they see is an extension cord as they are cutting wood to build a countertop. Mrs. Murphy said that there were lights on the shed to which Mr. Barboza stated they are solar lights. Mr. Cutler asked the petitioners if they plan on having electricity in the shed. Mr. Barboza stated yes but that he cannot have an electrician come to install it until they officially know where the shed is going. Mr. Cutler asked the petitioners how long it will take to remove the other two structures from the property if the Variance is granted. Mr. Barboza said within 60 days.

Mr. Flynn asked if there were any other petitioners on Zoom who wished to make a comment. There were no additional comments.

A motion to close public comment was made a 7:57 p.m. by Mr. Costa and seconded by Mr. Spirlet. Mr. Cutler recused himself of any vote on this appeal as he prepared it for the hearing. Motion to close public comment passed unanimously (6-0).

The board began discussions and touched upon the fire hazard concerns of Mrs. Murphy and also the fact that the lot was so small. Mr. Costa and Ms. Upton spoke about their concerns that the petitioners weren't meeting the requirement of hardship. The shed could be moved to a different location since the other two were being removed. The board looked over the site plan and asked questions about what was actually located in the yard. Mr. Barboza showed the board that what the site plan doesn't show is the trees and landscaping on property which have been there for years. This reduces the space where they can place the shed. Mrs. Upton suggested a location on the site plan where the petitioners can place the shed, which is only a few feet from the originally planned location. In this area, they would be addressing the abutter's concerns and Mr. Barboza agreed. The shed would still only be 4' from the setback but further away from the abutter's property. Mrs. Murphy accepted this.

Variance will have the following stipulations:

1. The structure will be no closer than 4 ft from the rear setback and repositioned to a new plot plan to 17 ft from the side setback.
2. The two other structures, shed and green house, are to be removed within 60 days of the Variance decision.
3. A revised plot plan demonstrating the repositioned location of shed.

Motion passes. Variance is thereby deemed granted.

Motion to adjourn the meeting made at 8:18 p.m. by Mr. Cutler and seconded by Mr. Sullivan.