

**Rochester Zoning Board of Appeals  
Business Meeting Minutes  
Hybrid Meeting  
May 11, 2023**

**Board Members Present:**

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

**7:05 PM** Chairman Arancio called meeting to order.

**Minutes:**

- Motion to approve Business Meeting Minutes of April 27, 2023 was made by Mr. Spirlet and seconded by Mr. Costa. The motion passed 4-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1189 of April 27, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed 4-0 with one (1) abstention.

**7:07 PM: Associate Member Michelle Upton entered the meeting.**

- Motion to approve Public Hearing Minutes for #1190 of April 27, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed 5-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1191 of April 27, 2023 was made by Mr. Sullivan and seconded by Mr. Spirlet. The motion passed 5-0 with one (1) abstention.

**New Business: 7:08 PM;** Discussion on a request for modification of Special Permit decision for petition #1166 dated August 26, 2021, allowing for a building to be used for the restoration, detailing, and storage of collectible cars with limited private sales on property located at 1 New Bedford Road, identified on Assessor's Map 4, Lots 28, 28B, 28C.

Present and representing the Applicant of #1166 is William Madden of GAF Engineering and Attorney Karla Chaffee.

Attorney Karla Chaffee began by introducing herself and William Madden and stated that there was no change to the purposed use as it was approved previously in the special permit but that there was a minor change to the orientation of the building and the driveway. She continued by saying that it was a mere request to approve the minor changes without having to go through a formal public hearing again.

Mr. Arancio asked Ms. Chaffee why there was a change to which Ms. Chaffee clarified that the changes to the orientation of the building were to accommodate some comments from the

Historical District Commission. Mr. Madden stated the driveway was shifting after a previous meeting with the Planning Board.

Chairman Arancio reiterated that this was not a public hearing but rather a discussion for the Board to decide whether the changes were, in fact, minor enough to not require a full public hearing. This was requested by the Applicant. Mr. Arancio specified that they would not solicit feedback from the public on this matter.

Mr. Cutler stated that upon reading the new material presented before the Board, it seemed that the Applicant had the intent of selling more vehicles than was initially stated. Ms. Upton stated that the Board received notice that the Applicant had applied for a Class 2 Dealer's License. Ms. Chaffee stated that this was not the case and that the Applicant would be completely happy keeping the current language of the Special Permit which was 1-2 private sales a year. Ms. Chaffee clarified that this license is not for the sale of 10-30 cars but for the storage of 10-30 cars and it would allow the Applicant to have dealer plates which facilitates them administratively. She continued that the original language in the Special Permit of "1-2 cars" will be complied with and that by having dealer plates, it would allow the Applicant to obtain a State License which allows him to attend certain auctions that he wouldn't ordinarily be able to. Ms. Chaffee said that the property is a private, family building for family and guests only.

Mr. Sullivan expressed concern that although their current discussion is not a public hearing that perhaps a public hearing should occur to allow for public comment. Chairman Arancio then spoke directly to Matthew Monteiro, Chairman of the Historical District Commission, who was present and asked if he would like to speak on the matter. Mr. Monteiro stated he was an abutter to the property and resided at 590 New Bedford Road and had recused himself of the decision making. He spoke briefly that a change that he has noticed that will likely be discussed when the Applicant returns to meet with the Historic District Commission, is the height of the building. It appears in the new plans to be taller and this can be an issue as it may be more visible from a public way.

Ms. Chaffee said that she wanted to remind the Board that this was an assessment and that the focus under M.G.L. Chapter 40A and the by-laws of the Town of Rochester is as to whether the use has a detrimental impact on the site or the community. The current discussion is an evaluation of the structure use, not the structure look. Chairman Arancio stated that the Board's purview was wide ranging and that town Boards work in harmony to maintain the character and other aspects of the town. He followed this up by stated that there were three obvious changes. The first is the driveway, the second is the change to the rain garden and lastly the change in the building orientation. He stated that these changes are substantial enough, in his opinion, to request the Applicant to request an amendment to the Special Permit that was previously approved.

Ms. Upton stated that although the changes may be minor they may be significant enough to warrant a Public Hearing to allow the citizens of Rochester to speak. Ms. Chaffee stated again that there were no changes to the use and asked that the Board take in the factors only.

Mr. Cutler asked Ms. Chaffee if they had met before the other Boards. She confirmed that they had met with the Planning Board, informally. Mr. Cutler stated that it may be best to make such a decision after the Applicant has formally met with the Planning Board. Mr. Davis agreed with Mr. Cutler. Ms. Chaffee stated that since the Applicant has met with the Planning Board for their technical review, there will be no further changes to what is currently being presented. Mr. Cutler asked if the abutters will have an opportunity to speak at the Planning Board meeting and was advised that they would. Mr. Sullivan stated that as long as the abutters had some sort of recourse, the ZBA could proceed. Mr. Spirlet stated he had no issues at all while Mr. Costa was conflicted due to the fact that the previously approved Special Permit has a condition set forth that the structure is not to be used for commercial purposes but the Class 2 license applied for by the Applicant directly conflicts with this. Ms. Chaffee advised the Board that if they began to sell more than two (2) cars a year, the Zoning Enforcer was more than welcome to inspect and hold them in violation.

Mr. Sullivan stated the Site Plan being presented has no setbacks indicated on it. The new Site Plan is not as well drawn as the originally and usually the ZBA is making decisions based on those plans. Chairman Arancio asked Mr. Madden if he had the most recent plan for the submission. Mr. Madden stated that he does have a set, which he believes was submitted to the Planning Board on May 4, 2023. He stated that this plan is the basis of all the plans of the site.

Mr. Cutler made a motion that the decision for #1166 be allowed to have minor Site Plan modifications as shown on Site Plan dated May 4, 2023 with all conditions of the existing Special Permit to remain unchanged. This motion was seconded by Davis Sullivan. Hearing no discussion, the Board voted with the voting members being Chairman Arancio, Mr. Cutler, Mr. Sullivan, Mr. Spirlet and Mr. Costa. Mr. Cutler, Mr. Sullivan, Mr. Spirlet and Mr. Costa voted yes while Chairman Arancio voted no. Therefore, the motion passed 4-1.

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**Board Members Present:**

Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

**7:50 PM** Chairman Arancio recused himself as Chairman for this petition as he was not present for the first hearing and he stepped out of the room. Richard Cutler resumed his role as temporary Chairman, as was his role during the first hearing for this petition, and called the meeting to order.

**#1190 and #1191 (Continued)**

**Carl H. MacDermott III, for the property located at 128 Dexter Lane, identified on Assessor's Map 6, Lot 11E, who is seeking a Special Permit for the approval of the conversion of the basement into an additional dwelling unit, under Chapter 20.40, Section F.9., a Variance for minimum required lot area of 105,000 square feet and a Variance for minimum required lot frontage of 300 feet, under Chapter 20.40, Section E. 16.**

The Applicant, Carl MacDermott III and his wife, Joyce MacDermott, were present at the meeting.

Mr. Cutler asked the Applicant if he would like to withdraw the application for Special Permit #1190 to which the Applicant stated yes, he would withdraw. A motion was made by Mr. Sullivan to accept the withdrawal without prejudice of Special Permit #1190 as was filed with the Zoning Board of Appeals on March 30, 2023. The voting members were Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa and Michelle Upton. This motion was seconded by Mr. Costa. The motion passed unanimously, 5-0.

Mr. Cutler now focused the meeting on petition #1191; the Variances. Mr. Costa made a motion to re-open public comment and was seconded by Ms. Upton. The motion passed unanimously 5-0. Mr. Cutler asked the applicant if he had anything he'd like to add from the last time the Board met on the appeal. The Applicant said no, stating that he didn't feel he had anything more to add unless someone had questions for him. Mr. Cutler left the floor open for any comments from the public but specifically abutters, to which there were none present in person or on Zoom. With nothing heard, he opened up the discussion with the Board.

Mr. Costa reiterated that the applicant would have to satisfy the three criteria set forth to be met for Variances and Mr. Spirlet read them out loud. The petitioner must establish:

1. There are unique circumstances relating to shape, topography, or soil conditions of the land (or the character of the existing building) including topography and placement of existing structure.
2. Literal enforcement of the by-law would involve substantial hardship, financial or otherwise to petitioner such as no other location for the addition.
3. The desired relief may be granted without substantial detriment to the public good.

Mr. MacDermott stated that he did and stated they would not be in violation of those conditions. Mr. Cutler said that as there were no abutters present to object, the third condition was already met. The second condition pertaining to hardship on the family was also presented by the Applicant. The first condition was met as the shape of the lot affects its frontage and the lot itself does not meet the minimum required lot size. All Board members agreed with these. A motion was made by Mr. Costa to close public comment, which was seconded by Mr. Spirlet. The motion passed unanimously, 5-0.

Mr. Cutler asked the applicant what they would do with the additional unit when their son moves out. The Applicant's wife stated she did not think he would ever move out and when she and her husband are no longer here, their son will likely live in the main dwelling. Mr. Cutler stated that once it is granted, it will remain as a two family. The Applicant stated that they never had the intention of anyone other than family living in the home and they do not desire that.

**MOTION: Grant two Variances to Carl H. MacDermott for the property at 128 Dexter Lane, identified on Assessor's Map 6, Lot 11E, for the minimum required lot area of 105,000 square feet and minimum lot frontage of 300 feet, for the conversion of the basement into an additional dwelling unit, allowed under Chapter 20.40, Section E.16., of the Rochester Zoning By-Laws.**

- This Variances are to be in accordance with a site plan entitled, "Plan of Foundation 'As-Built'" drawn by Charon Associates, Inc. and dated February 15, 2019.

**Voting Members:**

Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

**VOTE:**                      5 in Favor                      0 Opposed

Motion granted. *The Variance is thereby deemed granted.*

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David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa, Michelle Upton

**8:13 PM** Chairman David Arancio called the meeting to order.

**#1192 Randal G. Hutchings, prospective buyer for property located at 8 Robinson Road, identified on Assessor's Map 36, Lot 11, who is seeking a Use Variance under Chapter 20.40, Section F.6., for the approval of the operation of a small, wood pallet recycling business from the property.**

The Applicant, Randal G. Hutchings, his wife and their real estate broker/representative, Andrew Romano, were present. Chairman David Arancio began by reading aloud the abutters list. Those that were present either in person or via Zoom are as follows:

1. Joan Koczera, 4 Robinson Road, Rochester
2. Robert & Louise Bastarche, 239 Robinson Road, Acushnet
3. James A. Breault, 232 Robinson Road, Acushnet
4. Michael J. Jr. & Julie Koczera, 2 Robinson Road, Rochester

Mr. Romano, representative for the Applicant, began by introducing himself and clarifying that his client's work is more along the lines of restoration rather than recycling. He stated that the applicant has established contacts with local businesses where he will pick up old and damaged wooden pallets, restore them and then sell them to other businesses. He continued by stating that a portion of the property is currently classified under Chapter 61B, recreational land and that the Applicant, upon purchase of the property, will maintain that classification. He briefly spoke about the multiple structures on the property and referenced the two, single family dwellings and the indoor riding arena that is located on the side of the property closest to the Acushnet Townline. Mr. Romano stated that the riding arena would be used by his client as a workshop and storage for the wood pallets and any machinery/tools used in the pallet restoration. He stated that there wouldn't be any extra traffic as his client only has one box truck that he uses for his business.

Chairman Arancio asked the Board if they had any questions for the Applicant's or their representative. Mr. Cutler confirmed that there were two existing dwellings on the property and asked how long they had been on the property. Property records show that the oldest of the two dwellings was constructed in the 1930's and the second was constructed in 1965. Mr. Cutler stated he wanted to clarify this since the current by-laws do not permit two dwellings on the same lot, however, both dwellings pre-date the by-laws themselves. Mr. Spirlet then asked the

Applicant if this was a new business. The applicant stated he has been doing this kind of work for 15 years. They currently run this business out of their home in Acushnet. Mr. Spirlet asked the Applicant if he ever had any issues with his neighbors to which the Applicant stated that he did not. Mr. Spirlet then inquired about the noise level for this type of work. The Applicant stated that his radio is usually the most obvious sound and that he has never had a complaint. He leaves his property twice a day, at 10 am and 1 pm, to pick up and ship out pallets. Mr. Spirlet asked about the disposal of waste for the business, expecting that most of it would be wood. The applicant confirmed it is mostly wood and that some pieces he may throw into a dumpster but usually he uses them for kindling. Mr. Spirlet asked if he works on weekends. The Applicant's wife stated absolutely not. Her husband does not work on weekends and work days usually end when dinner is served at 5pm.

Mr. Cutler asked about the machinery. The applicant stated he mainly uses a nail gun, compressor and a radio saw. The question then arose regarding whether this was an allowed use per the town by-laws. Chairman Arancio stated that upon his first review of the application, he felt that this was an allowed by right use but that the Zoning Enforcer did not. Mr. Spirlet then stated that the Applicant was making sure he could conduct his business out of the property before purchasing it.

Chairman Arancio then opened the meeting to public comment. Mr. Breault, of 232 Robinson Road stated that they live in the woods and do not want to hear any noises. He stated that it will sound like houses are being built next door. Mr. Romano stated that his tools are mostly hand tools and there will not be an increase to the noise. Michael Koczera, of 4 Robinson Road, asked Chairman Arancio what recourse do abutters have if the applicant decides to expand his business and have ten (10) employees and numerous trucks. Mr. Arancio stated that they would have the same recourse as always; advise the Zoning Enforcer and file a written complaint. The Applicant stated he had no plans on expanding and had no issues with the Board implementing conditions. Mr. Koczera then asked if he only intended on using that building, referring to the indoor riding arena. The applicant stated yes, as it is a 65' by 65' building and enough for what he needs. Joan Koczera, also of 4 Robinson Road, asked if the applicants would be living on the property and if their hours of operation were only during the week. The applicant stated yes, they will live on the property and that their hours at 8 am to 5 pm. Mrs. Koczera then asked if abutters do have an issue with noise, can they speak directly to the applicant or are they not permitted to do so. Chairman Arancio stated that the town of Rochester does not have a noise ordinance unless specifically stated in a Special Permit. Mr. Cutler then added that if there is an issue, neighbors should be able to approach each other to discuss it. Several attendees agreed with this. The Applicant stated that if a neighbor approached with an issue, he would address it. Michael Koczera Jr. of 2 Robinson Road, asked if the Applicant intended on having animals as well, to continue the agricultural aspect of the property. The Applicant stated yes and Mr. Romano clarified that it will likely start small as they settle in before they bring in more animals. Julie Koczera, 2 Robinson Road, stated that her right of way goes along the side where the intended workshop will be. She was concerned about the reverberating noise of tools inside an open, metal building. The Applicant stated that the noise from regular farming equipment would also make a lot of noise. Mr. Romano interjected stating that given the building will also be used to store pallets, this will likely help muffle the sound. The Applicant stated he didn't have an issue insulating the building either. Nellie Breault, 232 Robinson Road, asked if they planned on

putting a larger sign out front of the property because people who want to go to the barn keeping going into her driveway, indicating the current sign isn't large enough to let customers know where the entrance to the property is. The Applicant reiterated that there will be no foot traffic for their business. The applicant works with large scale companies and picks up and ships the pallets himself.

Chairman Arancio, now asked if there were any parties on Zoom who would like to speak on the matter. Hearing nothing, a motion was made by Mr. Cutler to close public comment which was seconded by Mr. Costa. The motion passed unanimously 6-0.

The Board discussed the Use Variance and the strict conditions that must be met to be approved for a Variance. It is not typical for the Board to vote for a Variance in relation to the use of a property. There was discussion as to whether this was an allowed use by right, as it seems to be along the lines of carpentry. Chairman Arancio asked for a motion for a 5-minute recess so he could reach out to Town Counsel via phone. Motion to grant a 5-minute recess was made by Mr. Spirlet and seconded by Mr. Costa. The motion passed unanimously 6-0 and the recess began at 8:49 pm.

At 8:54 pm, Chairman Arancio reopened Appeal #1192. He proposed to the Board that, having no additional vehicles, employees or buildings being erected, that this home business is allowed by right, referencing Chapter 20.40, Section E.4.b. for carpentry. Mr. Costa agreed with this. Chairman Arancio stated that the Board has the right to make this decision. The Board deliberated further and Richard Cutler made a motion that under Chapter 20.40, Section E.4.b., the Use Variance is not required as the trade is allowed by right as there are no additional employees, vehicles or buildings being erected that are associated with the business. The motion was seconded by Mr. Costa. The voting members were Chairman David Arancio, Richard Cutler, Davis Sullivan, Donald Spirlet and Jeffrey Costa. The motion passed 5-0.

Chairman Arancio now asked the applicant if it was their desire to withdraw without prejudice from the application for a Use Variance to which their representative, Mr. Romano, stated they would. Jeffrey Costa made a motion to accept the withdrawal without prejudice for the appeal #1192 at 8 Robinson Rd as filed with the Zoning Board of Appeals on May 11, 2023. The motion was seconded by Donald Spirlet. Voting members are Richard Cutler, Davis Sullivan, Donald Spirlet, Jeffrey Costa and Michelle Upton. Motion passed 5-0.

A motion to adjourn the meeting was made by Mr. Spirlet and seconded by Mr. Costa. Meeting adjourned at 9:09 pm.