

**Rochester Zoning Board of Appeals
Business Meeting Minutes
June 8, 2023**

Board Members Present:

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

7:15pm Meeting called to order by Chairman Arancio

Minutes:

- Motion to approve Business Meeting Minutes of May 25, 2023 made by Richard Cutler and seconded by Donald Spirlet. Motion passed 4-0 with one (1) abstention.
- Motion to approve Public Hearing Minutes for #1150 of May 25, 2023 made by Richard Cutler and seconded by Donald Spirlet. Motion passed 4-0 with one (1) abstention.

New Business:

❖ **Discussion regarding potential By-Law Review Committee.**

Richard Cutler stated that having a 2-3 others come together to begin the process of reviewing the bylaws that pertain to apartments or multi-family conversions to minimize disagreements with Town Counsel. Davis Sullivan stated he would get involved in this committee as did Michelle Upton and Donald Spirlet. Chairman Arancio stated that he spoke with the Chairman of the Planning Board, asking him if he had seen this item on the agenda to which he had. It was revealed that the Planning Board would be discussing this same topic at their next meeting on Tuesday, June 13, 2023. Chairman Arancio asked the members of the ZBA if they would like to attend that meeting. There was some discussion about the previous by-law review committee, which included members of the ZBA as well as the Planning Board, the Building Commissioner, Conservation, and Board of Health. Davis Sullivan asked if any changes had to go through the Attorney General and Richard Cutler gave a quick summary of the process in by-law amendment or adoption. ZBA Administrative Assistant, Andreia Ribas, advised that she had spoken with the Town Planner and that she and the Building Commissioner were already looking at by-laws that may need to be amended. Richard Cutler stated he would stop by the office and speak with the Town Planner regarding the formation of the committee.

❖ **Discussion with Rhiannon Dugan, Senior Environmental Planner for SRPEDD and the project manager for Rochester's Master Plan.**

Rhiannon Dugan began with introducing herself to the Board and explaining her reasoning why she was at the ZBA meeting. She stated that anything that is put into the town's Master Plan is followed through by the community and the town itself, therefore it is important to work with the town's governmental bodies. Over the last few months, she has met with various Board Heads siting Boards such as Planning, Town Administrator, Building Commissioner, etc. Now her goal is to open discussion with the various Boards themselves.

She presented a short list of questions to help guide the conversation with the ZBA. Those questions and the subsequent discussions on them are as follows:

1. What takes up most of the boards time? Is there anything you wish was more efficient?

Davis Sullivan said when the Board goes over the application and finds that the Applicant did not apply under the proper by-law or ordinance. There have been issues with whether an Applicant needs a Variance or a Special Permit. The application may need adjusting and there should be assistance to Applicants to help guide them to the proper petition. He continued by using the example that some Applicants come before requesting a Variance but actually need a special permit and the Board, has changed it during the meeting. Michelle Upton stated that this can take more time and often, Applicants have to refile which further prolongs the duration.

2. Do you feel that the town's current zoning matches the needs of the town?

Richard Cutler began by stating that it's tricky as many of the town's by-laws aren't being followed and so it is hard to tell if it matches the town's needs. Rhiannon attempted to clarify by asking if this is variances in spot zoning or the opposite. Mr. Cutler stated it was blatant ignorance of the by-laws. Rhiannon asked Mr. Cutler if there were any specific by-laws where this is happening and he stated there was not. Chairman Arancio stated that he thought there was potential to look at other communities similar to Rochester and look at what they've instituted into their by-laws. There is a whole process to changing a by-law and it's important to look at future town needs and how is that incorporated into the Master Plan.

A and B.) Are local business owners able to flourish and is there space for new local businesses?

Richard Cutler stated that some business flourish by ignoring the by laws and as far as space is concerned, there is space in the commercial and limited commercial districts but he did not know how long that will last. Chairman Arancio added that he felt the ZBA was historically business friendly. Rhiannon referred to Mr. Cutler's previous statement and paraphrased it, asking if the space available would fill up quickly because the parcels themselves aren't very large. Mr. Cutler clarified that the nature of business is changing

so much it's hard to tell citing as an example of the Silver City Galleria and how it was built but now no longer exists. Mr. Sullivan stated that a lot more businesses are home based which is difficult because of abutters and it can become contentious during meetings. Rhiannon asked if he was referring to at home businesses just in the Agricultural/Residential District or outside of it. He clarified that it was all of them. The last case remanded to the Board was a horse farm with abutters all around. The ZBA placed restrictions on the final decision but their attorney told them they need not abide by those but this is difficult when you are trying to keep peace in a neighborhood.

C. Do lot size requirements limit housing options for Rochester?

Donald Spirlet stated, yes but they should. Davis Sullivan seconded this by stating that it's the reason for the requirements.

3. Does the Board have enough members to cover site visits?

Richard Cutler said that the Board doesn't usually do site visits and Chairman Arancio stated that they haven't had an issue with that.

4. Does the current zoning create any challenges for residents, developers, or the board? Are there any specific by-laws that seem to have the most challenges for applicants? Are there by-laws that are more difficult to implement?

Mr. Sullivan reiterated the at home business by-laws. Michelle Upton mentioned the multi-family by-laws to which most of the Board agreed. Mr. Sullivan then stated that this is why people come before the ZBA; for relief. Chairman Arancio said that over the last decade, the ZBA has become the first go-to instead of other Boards such as Conservation or the Planning Board. Donald Spirlet stated that it's the purpose of the Board, to obtain that relief within reason.

5. Is the communication between the Planning Board and the Zoning Board effective?

Mr. Cutler stated that the ZBA doesn't interact with them on a regular basis. Chairman Arancio advised that the Planning Board has a different process than the ZBA which is often more involved.

6. What are the most common types of Variances you are granting?

Board member Spirlet said the multi-family and the 40-foot set back and Mr. Sullivan said multi-family and Special Permits. Rhiannon asked if this was being seen on new homes or on additions. Several board members answered that it was both.

7. Where can the Master Plan process assist you? What are the most important action items that we could include to support your board's goals?

Board member Davis Sullivan stated he would like to revisit the town's involvement in solar farms. These companies often come in and these places look like waste sites. The state ties our hands. He referred to one case where fourteen (14) acres of trees were cut down and the top soil removed and excavated. He did not think they should be so invasive because if the equipment became unusable or we find a different source of energy, that land will be ruined. Rhiannon stated that the town has a soil board, although they don't meet often. She asked if it was known whether they were involved in that project. Mr. Sullivan reiterated that the state ties their hands and there cannot be any undo restrictions on these solar farms. Rhiannon stated that there are other communities who are affected by these.

For the second part of the question, Rhiannon was asked what can the Master Plan do to assist and she responded by stating that they are considering what the residents want out of housing and what they want to see for business. The Master Plan wants to use public engagement to get people's ideas of what they want to see in town. She spoke briefly about affording housing and Richard Cutler stated that the previous Master Plan specifically referred to it. Chairman Arancio stated that this is why it's important to look at what residents want for the town for the next ten or twenty years and that the ZBA needs to have representation on the Master Plan. Michelle Upton spoke about the State's involvement and what could the Master Plan do to help. Rhiannon responded there isn't much they can do as the Master Plan is at a town level. Her philosophy is about being as involved in the community as possible to know what residents want.

Town Administrator Glenn Cannon stated that one thing to look for in the Master Plan is that it is a voice for the town and it can be useful, especially with the solar issue.

Rhiannon briefly explained what she does for SRPEDD and stated she handles several towns in Massachusetts. The idea of looking into close and similar communities, such as Carver, would be a great idea. Rhiannon ended the discussion by passing out her contact information.

Business Meeting adjourned at 8:01pm.

**Rochester Zoning Board of Appeals
Public Hearing Minutes
June 8, 2023**

Board Members Present:

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

8:02 pm Meeting called to order by Chairman Arancio

#1193 Walter Hartley on behalf of Jon and Jaqueline Hartley for property located at 178 Clapp Rd, identified on Assessor's Map11, Lot 6M, Deed Recorded in Registered Land (Land Court) Book 47424, Page 80, who is seeking a Variance for the minimum required front setback on the construction of a new front porch and stairs, under Chapter 20.40, Section D.1., of the Rochester Zoning By-Laws.

Walter Hartley who represented the Applicants was present as was Jacqueline Hartley and her father, Chuck Fougere, who created the architectural design.

There were no abutters present, therefore Richard Cutler made a motion to waive the reading of the abutters list. This was seconded by Donald Spirlet and passed unanimously 5-0.

Chairman Arancio read the intent of the presented project aloud and gave it over to the Applicants to further explain. Walter Hartley stated that he created the Site Plan and that the plan was for a new porch to be constructed and the existing stairs to be updated. The current setup is a small landing in front of the front door with only a few steps. There is no weather protection and for this reason, the Applicant's don't use that door as much. Instead, they use a secondary entrance that requires they go through their garage. Chairman Arancio asked what the width of the new porch would be and was advised by Chuck Fougere that it would not exceed the width of the current stairs but that upon updating the existing stairs, they will protrude slightly in front of the new porch.

After asking each Board member if they had any questions for the Applicant, to which there were none, Chairman Arancio moved forward with the discussion and spoke on the three (3) conditions that must be met by the Applicants. Mr. Hartley began with the difficulty of not having any weather protection over the front entrance. Jacqueline Hartley now spoke stating that she would like a covered porch so that her two small children would have protection from the weather while waiting for the school bus. She also stated that having the porch would give her children a place of to stay while outside as she is concerned about speeding cars that pass by her home.

Chairman Arancio advised the Applicants that the burden of proof and meeting the three conditions for a Variance were on them. It was determined that due to the existing house and shape of the lot, the Applicants would be unable to meet the present setbacks. It was further determined that the literal enforcement would involve substantial hardship as this could only happen if the house itself were moved back; which, according to Mr. Hartley, would be absurd and expensive. And lastly, being that there were no abutters present during the meeting, it was apparent that these additions would not be of substantial detriment to the public good.

Richard Cutler then motioned to close public comment, which was seconded by Donald Spirlet. The board now began its deliberations.

MOTION: Grant a Variance to Walter Hartley on behalf of Jon and Jaqueline Hartley for property located at 178 Clapp Road, identified on Assessor's Map 11, Lot 6M, who is seeking a Variance for the minimum required front set back on the construction of a new front porch and stairs, under Chapter 20.40, Section D.1., of the Rochester Zoning By-Laws with the following conditions:

1. New front steps to be no closer than 35.5' from front setback.
2. The front porch is not to be enclosed.

Motion to grant Variance was made by Davis Sullivan and seconded by Richard Cutler.

Voting Members:

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

VOTE: 5 in Favor 0 Opposed

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

Richard Cutler made a motion to adjourn the meeting which was seconded by Davis Sullivan. Meeting adjourned at 8:20 pm.