

**Rochester Zoning Board of Appeals
Business Meeting Minutes
Hybrid Meeting
February 10, 2022**

Board Members Present:

Davis Sullivan, Richard Cutler, Donald Spirlet, Jeffrey Costa, and Thomas Flynn (Zoom)

7:00 p.m. Called Meeting to Order

Minutes:

- A motion to approve the Business Meeting Minutes of January 27, 2022 was made by Mr. Costa and seconded by Mr. Spirlet. The motion passed unanimously (5-0).
- A motion to approve the Public Hearing #1171 Minutes of January 27, 2022, was made by Mr. Cutler and seconded by Mr. Spirlet. The motion passed unanimously (5-0).

A motion to close the Business Meeting at 7:04 p.m. was made by Mr. Spirlet and seconded by Mr. Costa. The motion passed unanimously (5-0).

A motion to recess until Mr. Flynn and Mr. Arancio arrive was made by Mr. Cutler and seconded by Mr. Spirlet. The motion passed unanimously (5-0).

Mr. Arancio arrived at 7:07 p.m. Mr. Flynn arrived at 7:16 p.m.

Respectively submitted,



Patrice Braz, Board Administrator



David Arancio, Chairman

**Rochester Zoning Board of Appeals
Public Hearing Minutes
Hybrid Meeting
February 10, 2022**

Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, Donald Spirlet, and Jeffrey Costa

7:17 p.m.

#1170

(continued from 1/13/22 & 1/27/22)

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.

A Mullin Affidavit was signed by Mr. Cutler for missing the hearing on January 13, 2022.

Shayna Galinat, General Counsel was present, as well as Kevin Delaney, Engineer for Industrial Tower and Wireless, LLC.

Mr. Arancio asked if the Board has any questions at this time; the Board replied that they do not. He then opened public comment to anyone in person.

Abutter Michelle Upton of 80 Forbes Road read a statement that she prepared.

Mrs. Upton said that her family has lived in the tri-town area for about five months and she is concerned about the potential health risks of the cell tower being so close to her home. In her neighborhood, there are close to almost 100 children that live there who are in the most critical stages of their development. Mrs. Upton said nothing causes health risks until it causes health risks. She asked if the applicant sincerely believes that they have done enough research to determine the true safety of long-term surges of the cell phone tower for the development of children. She said that she appreciates the Board's time and hopes that the Board does not take just a shallow dive into the research, but really look at both sides of this issue.

Mr. Arancio asked if the applicant would like to address some of Mrs. Upton's comments.

Mr. Delaney referred to page 8 of the packet given to the Board that addresses radiation safety. He also stated that cell towers are lower than other types of towers.

Abutter David Paquin of 381 County Road said he was reading the packet which states that visual and safety were approved, however they were not. He commented that they did not approve it if the tower is 100' closer to the road, and they didn't approve visual, as you can still see the cell tower from High Street. After he reviewed the plan, he asked what the real reason behind applying for a Special Permit is.

Abutter Louis Paquin of 381 County Road told the Board that she looked for a list of cell towers in the area and couldn't find any new ones. She did find 16 existing towers in 9 miles, and she read her statement which states where the cell towers are and how far away they are from the proposed cell tower. Mrs. Paquin asked Mr. Arancio how many antenna's and how many different companies there are. Mr. Arancio asked the presenter to answer the question. Mr. Delaney replied that as far as companies and Town requirements, it has to be capable of holding five major companies such as Verizon, AT & T, T-Mobile, and Dish Wireless.

Abutter Carl Paquin of 114 Pierce Street read his statement on research he did on cell tower safety.

Emile Tayeh of ADGA Realty, 100 Palmer Mill Road in Halifax introduced himself to the Board as the new owner of the subject property. Mr. Tayeh said that he paid \$200,000 over asking price for the property, but he wants to make sure that the neighbors are happy. He bought 571 acres plus of this property.

Abutter Ellen Sheehy of 468 High Street commented that she just doesn't want to see this cell tower from her house every day.

Abutter Colleen Campbell of 468 High Street spoke in reference to the Town By-Laws, Chapter 22.30 Personal Wireless Facility, Section A, The Purpose, Sub-Section 1. She asked if the applicant has exhausted all possibilities for a more appropriate location for this cell tower. The applicant answered this question by saying yes, they did exhaust all possibilities.

Abutter Adam Hilchey of 67 Forbes Road said his property abuts the cranberry bogs and his back yard. He works for Comcast and every year has to take a course on 5G; they are not allowed to climb towers. He did research on graphene oxide and 5G; he suggests that others do the research also. He stated that having this tower in his back yard is unsettling.

Atty. Galinat provided wind load requirements and increased ice and wind load information to the Board. They are asking for a 50% setback waiver between the lot line of the required 200-feet. There is potential for a whip antenna on top for public safety if needed. If moved 200-feet, the tower would be closer to homes on Forbes Road. They have submitted a Planning Board filing and received a Conservation Commission negative determination. They would like the Board to take a vote on this application so they can take it to the Planning Board with an approved use to proceed with a site plan for their Site Plan Review application. Atty. Galinat stated that if anything is modified in the Planning Board process, they understand it needs to come back to the Zoning Board of Appeals.

Abutter Colleen Campbell of 468 High Street said that the applicant on the form is A.D. Makepeace and that she was just informed that ownership has changed. She would like to know if it makes this application null and void. Mr. Arancio replied that it is a question that we have to ask the applicant. Atty. Galinat said that she wasn't aware that they closed; A.D. Makepeace said that it is going on record tomorrow. She stated that they could get another authorized signature tomorrow. The new owner was aware in October but wasn't allowed to go on record. Mr. Arancio said that he would have to refer this question to Town Counsel.

A motion to request Town Counsel to draft a memo to the applicants requesting the new property owner's authorization of Industrial Tower and Wireless, LLC to act on their behalf for this filing, and to draft the decision, was made by Mr. Cutler and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

A motion to continue the public hearing until 7:15 p.m. on February 24, 2022 was made by Mr. Cutler and seconded by Mr. Sullivan. The motion passed unanimously (6-0).

Mr. Cutler said that he's not thrilled with the 100' waiver to the property line. They should be able to figure out how to get back from the line a little further.


Mr. Costa said that someone had brought up the purpose of the by-law, as well as property values, which was deferred to the Assessors. He wouldn't mind hearing the answer from the Assessors and maybe getting a copy of a statement from them. Mr. Costa also was wondering if the tower is going to be 5G or 4G because both are mentioned. He would also like to know about radiation distances from cell phone towers and how the radiation diminishes over distance. Mr. Delaney addressed this and said 5G is what is going to be eventually on the tower. The next generation of wireless network is 5G. He reported that he has some graphs that show safety and how radiation dissipates with distance; it is put together by the FCC federal guidelines. Mr. Costa said he looked at the math, and asked Mr. Delaney if he was referring to exhibit 8, page 2 in the packet given to the Board. Mr. Delaney replied that it's on page 8 of 13 and shows it 0-5,000 feet. Mr. Costa asked how it compares to x-rays and microwaves. Mr. Delaney said it is way below, he doesn't have any numbers, but he can get some examples. He said they will be providing the Town with a stamped letter from the manufacturer that shows if the tower were to fall, it would do so at the crumble point of 100', so that it would fall within itself and not over the property line.

Mr. Flynn said he would like to go back to discussing safety considerations and the reason behind requesting a Special Permit. He asked how many houses will be impacted if the Special Permit is granted. Atty. Galinat answered by saying that less than three (3) houses within a 1,200' radius, if it is moved 200' from the property line. She does not believe that the houses on Forbes Road are within that 1,200' radius. Atty. Galinat said that moving the tower 200' from the property line would make it closer to the houses and make the tower more visible. Mr. Flynn said that Mass. General Laws, Chapter 40A, Section 11, discusses the review of the Special Permit applications and who may submit them; the petitioner has to be the owner or someone who is authorized by the owner. Mr. Flynn said that personally, he doesn't see a way to act on a petition if it's a question of who the owner is. He went online to the Registry of Deeds website and said there is nothing on record right now. He would like to know if a new application to the Zoning Board of Appeals will be required if there is now a new property owner. He asked Mr. Arancio, if the Variance isn't granted, would that mean that there would be a greater impact on wetlands. Atty. Galinat said that they just learned about the new ownership this evening; if you go on the Registry of Deeds website and look up the property, you will see the Memorandum of Lease that is recorded under Registered Land and it is transferrable.

A motion to continue the public hearing until 7:15 p.m. on February 24, 2022 was made by Richard Cutler and seconded by Mr. Spirlet. The motion passed unanimously. (6-0)

A motion to have Town Council draft a memorandum and decision regarding ownership to Shayna was made by Richard Cutler and seconded by Davis Sullivan. The motion passed unanimously. (6-0)

The Board will discuss a date for a site visit and get back to Atty. Galinat by Monday. Respectively submitted,



Lori Walsh, Recording Secretary


David Arancio, Chairman

**Rochester Zoning Board of Appeals
Public Hearing Minutes
Hybrid Meeting
February 10, 2022**

Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, Donald Spirlet, and Jeffrey Costa

8:18 p.m.

#1172

Anthony and Mary-Patrice Ruocco for property located at 308 New Bedford Road, identified on Assessor's Map 2, Lot 13A who are seeking a Special Permit under Chapter 20.40, Section F.6. to use the premises as not only a residence, but to establish a Farm Winery (A&M Winery). They propose to specialize in providing specialty dessert wines for wine tastings on site, by appointment, and subsequently providing small batches for weddings and corporate functions conducted elsewhere. The wine is proposed to be prepared, fermented, and bottled on site.

Mr. Arancio disclosed that he and the applicant, Mr. Ruocco, serve on the Finance Committee together.

Mr. Ruocco was present to discuss the project.

Mr. Arancio read the certified abutter's list. The following abutters were present:

Abutter Kim Mattar of 232 New Bedford Road was present on Zoom and asked about pesticides. Mr. Ruocco said that right now, the plan is not to use pesticides, but they will use fungicides which will be used very early in the season, probably in early March, and then once more in midsummer. Ms. Mattar asked if the fungicide is a spray. Mr. Ruocco confirmed that it is.

Abutter Ellen Endres of 303 New Bedford Road asked about parking and how they would accommodate it. Mr. Ruocco said that they have an existing parking area in the back.

Abutter Randy Arsenault of 20 Country Lane said that they live directly behind this property. He is concerned that their privacy would be taken away. He stated that during the summer months, there may be a smell and flies from the grapes. Nancy Arsenault spoke also and is worried about their privacy and the value of their home being affected. Mr. Ruocco said there is nothing being built and that the parking lot already exists. He explained that wine tasting will be inside, not outside, and that it is a farm winery of dessert wines and small gatherings by appoint. Functions will be off sight. Mr. Arancio said that he would like an updated plot plan.

Mr. Flynn commented that he doesn't understand why Mr. Ruocco is here for a Special Permit when this is a permitted use. He would like clarification from Town Counsel. He said that charging for wine may be the issue; he would like clarification.

A motion to continue the public hearing until 7 p.m. on February 24, 2022 was made by Mr. Flynn and seconded by Mr. Cutler. The motion passed unanimously (6-0).

Respectively submitted,


Lori Walsh, Recording Secretary


David Arancio, Chairman

**Rochester Zoning Board of Appeals
Public Hearing Minutes
Hybrid Meeting
February 10, 2022**

Board Members Present: David Arancio, Davis Sullivan, Richard Cutler, Thomas Flynn, Donald Spirlet, and Jeffrey Costa

8:58 p.m.

#1173

Linda & David Gauthier for property located at 88 Bowen's Lane, identified on Assessor's Map 31, Lot 8A, who are seeking a Variance to construct an addition to the easterly side of the existing single-family dwelling, closer than the 40' side yard setback requirement, under Chapter 20.40, Section D.1. of the Rochester Zoning By-Laws.

Linda and David Gauthier were present in person, as well as John Romanelli of Zenith Land Surveyors.

Mr. Arancio read the certified abutter's list. Taylor Realty Trust of 94 Bowen's Lane was present on Zoom.

Mr. Arancio read aloud the correspondence from Town departments and abutters.

Mr. Romanelli explained to the Board that the applicant is seeking to construct a living room addition of 425 square feet. The septic system is in the rear of the property and will have no impact. There is currently a horse barn, above ground pool, and shed on the property.

Mr. Cutler questioned why the house was constructed so close to the property line. Mr. Gauthier replied that it was the highest spot on the property for the septic system, as there is a change of elevation and groundwater. Mr. Arancio noted that if there is a topographical issue and soil condition on the property, then it should be shown on the plan if they plan to use it as a hardship. Mr. Arancio commented that the other side of the house is currently wide open with no setback issue. Mr. Gauthier replied that they intend to construct a 2-car garage in the future on the other side of the house, and the floor plan would work better if they are able to construct the addition on the proposed side. There is a bedroom that they would lose and the side door and walkway would need to be replaced if the addition were to be put on the other side.

Mr. Costa asked if the roof overhang is included on the site plan; Mr. Romanelli replied that it is.

The public comment segment was opened at 9:19 p.m., however, there were no comments.

A motion to close the public comment segment was made by Mr. Costa and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

Vote:

A motion to grant a Variance to Linda and David Gauthier for property located at 88 Bowen's Lane, identified on Assessor's Map 31, Lot 8A to construct an addition to the easterly side of the existing single-family dwelling, closer than the 40' side yard setback requirement, under Chapter 20.40, Section D.1. of the Rochester Zoning By-Laws was made by Mr. Costa and seconded by Mr. Sullivan.

This Variance is to be in accordance with a site plan entitled "Zoning Board of Appeals Plan" dated January 19, 2022 drawn by Zenith Land Surveyors, LLC.

After giving all parties an opportunity to present evidence and discuss the case, the Zoning Board of Appeals made the following determination:

1. There are unique circumstances relating to shape, topography, or soil conditions of the land (or the character of the existing building) such as the contour and elevation of the land and location of ground water, and
2. Literal enforcement of the by-laws would involve substantial hardship, financial or otherwise to the petitioner such as, the existing layout of the structure would result in a safety issue if the proposed addition was relocated, and
3. The desired relief may be granted without substantial detriment to the public good.

VOTING MEMBERS:

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


VOTE: 5 in Favor 0 Opposed

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

A motion to adjourn at 9:30 p.m. was made by Mr. Flynn and seconded by Mr. Spirlet. The motion passed unanimously (6-0).

Respectively submitted,


Patrice Braz, Board Administrator


David Arancio, Chairman