

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
November 26th 2024

Meeting called to order at 7:00pm by Chairman George Carmichael with the Pledge of Allegiance. Members and alternates introduced themselves.

- Members Present:
 - George Carmichael, Chairman
 - Kevin Sawyer, alternate
 - Terrance Fogg, alternate
 - Marty Kulla, member
 - Marcia Breckenridge, member
 - Ross Thermos, member
 - Peter Letourneau, alternate
 - Phil Sternersen, member
- Members Absent:
 - Adam Rickenbach
- Public Present
 - Kim McCummings
 - Dan Barowski – Fieldstone
 - Bob and Sara Jones
 - Jim and Peg Crister
 - Ezra Ketola
 - Roberta Oeser
 - Paul Grasewicz – Graz Engineering

The Chairman explained how the meeting will proceed with three parts to each case: testimony, deliberative session, and decision. He then asked if there were any recusals, there were none.

Public Hearings:

- Case #24-2032: Variance Application for Map 6 Lot 65
 - P. Letourneau read the case to the Board: Map 6, Lot 65, 94 Main Street, Ezra Ketola for a Variance from Article VI Section B 3d to allow a 3-Unit multi-family development on 3 acres of land.
 - Mr. Ketola or representative to present the case. Dan Barowski, surveyor with Fieldstone Consultants, will present on behalf on the applicant. G. Carmichael asked if sheet handed to ZBA by D. Barowski is the same as presented to the Board in the prior meeting, confirmed.
 - D. Barowski explained the proposal is for one additional unit for dwelling with smaller unit lot than previously allowed, a total of three units at the property at 94 Main Street. The proposed three-unit dwelling will have a reduction in square footage footprint than the existing house that is in significant disrepair and in need of redeveloping. According to the proposal, there is ample area for septic to accommodate the increased units in line with proposed multifamily settlements in nearby neighborhoods.
 - D. Barowski stated that one acre per unit in 3-multifamily unit variance would not diminish nearby property value and several nearby properties do not adhere to the 2 acre property requirement, especially being in the village district that includes many lots that are settled on areas of one acre or less of land. He added that diversifying property unit types would balance need for additional housing types and needs within Rindge.

- No questions from ZBA members or alternates.
- Public Comments
 - Roberta Oeser, 76 Main Street.
 - R. Oeser expressed concern with the current location of the septic system within the wetland and standing water setback and noted that her research notes that no septic installation within the 50ft wetland setback and within a 100ft setback, and that current septic could only be repaired and not replaced in the current location. She contested that the homeowner application states that neighboring lot sizes are undersized for the area and notes that the abutting properties are all oversized. She further expressed concern that any proposed septic locations are limited by the gradient and physical layout of the land.
 - R. Oeser reminded the Board that this is not the first variance requested by the homeowner.
 - G. Carmichael asked R. Oeser to remind the Board of the first variance, to which she replied it was regarding road frontage.
 - Jim Critser, 77 Main Street.
 - J. Critser addressed the Board in a series of two letters with the first including the support of five signatures in agreement from abutting landowners. He spoke in opposition of granting variance to increasing dwelling units. J. Critser noted that farmer interest in the variance approval in regard to septic concern, increased road traffic, and potential environmental and community setbacks. He noted that motorists had already been witnessed accosting neighboring farmers moving cattle across the street, there is concern this will increase with increased units built. Additionally, he and abutting landowners are concerned that any potential septic violation will be harmful to livestock and farmer livelihood.
 - Kim McCummins, Rindge resident.
 - As a supporter of local farmers and producers, the contributions of local producers are a large part of the heritage and history of the town of Rindge. While it may seem important to build, the larger issues are that of water and septic in town, and the Board is implored to focus on that.
 - R. Thermos asked the applicants if there was a designed plan for the septic revision. E. Ketola noted that there is no confirmed plan, but t a design and D. Barowski noted areas where a septic may be placed on recommendation from a septic professional who marked potential sites. He added that some of the more minutia details are ones to be addressed in Planning Board.
- Motion to enter deliberative session
 - **M. Breckenridge moved to enter the deliberative session, seconded by P. Stenerson. The Board voted in favor of moving to deliberative session 5-0.**
- Decision Tree
 - 1. The variance would/would not be contrary to the public interest because:
 - M. Breckenridge stated the public had clearly voted for a necessary requirement for a minimum lot size for dwelling units whereas this property presents ½ of the required land. P. Stenerson counters that voters have also voted for up to ten units on 5 acres.
 - G. Carmichael found merit in public complaint of runoff and in the makeup of the land and wetland.
 - P. Steverson notes the preamble of the Zoning board and that it should not take into consideration the physical makeup of the land in question and buildable lot size, countering G. Carmichael's point.
 - **M. Breckenridge moved that the variance would be contrary to the public interest because voters have consistently voted for two acres, seconded by Ross Thermos.**
 - **The Board voted in favor of the motion 3-2.**
 - 2. Granting the variance would/would not do substantial justice because:
 - M. Breckenridge noted again that Board should enforce the will of voter's rule which has voted to keep lot regulation and sees this as mistrust of voter trust.
 - P. Stenerson noted any loss to the individual that is not outweighed by the public gain is unlawful.

- G. Carmichael argued that applicant has value in home as current single-family home and can apply for home to be a legal multi-family dwelling.
- R. Thermos noted that ZBA can also analyze if public can benefit from denial of the variance- and it can be argued that the abutting landowners have stated it would have impact on local food bank, farming producers.
- **M. Breckenridge moved that granting the variance would not do substantial justice because it disregards in a very substantial way what the voters have voted in more than once, seconded by G. Carmichael.**
 - **The Board voted in favor of the motion 3-2.**
- 3. The variance would/would not be consistent with the spirit and intent of the Rindge zoning ordinance because: The intent of the ordinance is to promote health, safety and welfare, and to preserve the values and character of the Town; consider whether the variance is inconsistent with these goals.
 - **G. Carmichael moved to repeat the motion of above (granting the variance would not do substantial justice because it disregards in a very substantial way what the voters have voted in more than once) as it would because it significantly different than what the voters have demanded than what the voters have demanded in acreage per unit, seconded by M. Breckenridge.**
 - **The Board voted in favor of the motion 3-2.**
- 4. Granting the variance would/would not diminish surrounding property values because: Evidence from an appraiser or realtor would be relevant; the Board can also rely on its knowledge of the area.
 - **M. Kulla moved that we have no evidence that we have no evidence it would decrease property values, seconded by G. Carmichael.**
 - **The Board voted in favor of the motion 5-0.**
- 5. Special conditions do/do not exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship. (the unique features or special conditions should be identified):
 - **G. Carmichael moves that special conditions do not exist on the property to distinguish it from other properties in the area because the owner already has use of the property as a single family already exists on the property, seconded by M. Breckenridge.**
 - **The Board voted in favor of the motion 3-2.**
 - A) No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provision(s) to the property because:
 - **P. Stenerson moves that no fair and substantial relationship exists between the general purposes of the zoning ordinance provisions and the specific applications of the provisions of the property because it doesn't affect the health, safety and welfare and it doesn't affect the value and charm now attached to our town, seconded by M. Kulla.**
 - **The Board denied the motion by a vote of 2-3.**
 - B) The proposed variance would/ would not be a reasonable one because:
 - **G. Carmichael moved that the variance would not be reasonable because it fails four of the five criteria, seconded by M. Breckenridge.**
 - **The Board voted in favor of the motion 4-1.**
- **Case #24-2033: Special Exception Application for Map 6 Lot 65**
 - G. Carmichael presented the case to the Board: Map 6, Lot 65, 94 Main Street, Ezra Ketola for a Special Exception as described in Article V, Section A-3 Rindge Zoning Ordinance.
 - M. Breckenridge questioned if the case can be read without a septic design plan presented. G. Carmichael read aloud Article XV, B to the Board for clarity whereas P. Stenerson noted the presentation as shown tonight may show a proposal contingent on a final approval.
 - G. Carmichael proposed moving forward with the representative's presentation then returning to the question in deliberation.

- Mr. Ketola or representative to present the case: Dan Borowski, Fieldstone Consultants, presented as representative read the criteria.
 - Proposed three family use will not create excessive traffic, congestion, noise or odors or reduce the value of surrounding properties. It will not create a strain on septic because adequate water and sewage are on site with an existing well and sewage disposal. Three separate areas where septic can be placed have been identified. The existing structure is in need of significant repair and the new structure would be significant improvement. The zoning relief has been requested before investing in new plans for septic design.
- Questions from ZBA and Audience
 - Roberta Oeser, 77 Main Street.
 - Remarked that increase in traffic is inevitable as property was previous owned by two people, a potential increase of motorists if 3 units were built and fully leased would be significant. She also noted that existing issues with excessive speed and blind traffic areas would increase congestion and confusion.
 - Argues that septic design consultation is not verifiable as a plan.
 - M. Breckenridge asked P. Stenerson if the length and grade of the proposed slope for septic would be possible to install. P. Stenerson confirmed.
 - J. Crister, 77 Main Street.
 - Again, commented on the nature of a large septic and the issue it would cause if improperly maintained or failed and the effect on local farmers.
 - G. Carmichael thanked him for his comment but reminded him that it is outside the scope of the ZBA.
- Motion to enter deliberative session
 - **P. Stenerson moved to enter deliberative session, seconded by R. Thermos.**
 - **The board voted in favor of moving into deliberative session, 5-0.**
- Decision
 - The Board finds that the use will/will not create excessive traffic, congestion, noise, or odors
 - **M. Kulla moves that this will not create excessive traffic, congestion, noise or odors and we have no evidence that it will, seconded by R. Thermos.**
 - **The Board voted in favor of the motion, 5-0.**
 - The proposed use will/will not reduce the value of surrounding properties
 - **M. Breckenridge moved that we have no professional opinion that property value will go down, seconded by G. Carmichael.**
 - **The Board voted in favor of the motion, 5-0.**
 - There is/is not adequate sewage and water facilities and sufficient off-street parking as provided by the applicant.
 - The Board deliberated that the merit of no formal and approved plan being presented at the meeting for review, though options were provided. P. Stenerson noted a formalization of a plan would be likely be presented if a special exception to build was approved.
 - **M. Breckenridge moved that the applicant did not provide evidence and a plan of adequate sewage, seconded by P. Stenerson.**
 - **The Board voted in favor of the motion, 4-1.**
 - The proposed use will preserve the attractiveness of the town.
 - **M. Breckenridge moves there is no evidence that the proposed use will affect the attractiveness of the town, seconded by M. Kulla**
 - **The Board voted in favor of the motion 5-0.**
 - Motion on granting special exception
 - **P. Stenerson moved that the special exception be denied that since the five criteria were not met, seconded by M. Kulla.**
 - **The Board voted in favor of the motion 4-1.**
 - **Special Exception was denied as it did not meet all of the required criteria.**
- Deliberative session to consider an application for rehearing from Case#24-2030 for Map 2 Lot 45
 - **M. Breckenridge moved to enter deliberative session, seconded by R. Thermos.**

- **The Board voted in favor of the motion 5-0.**
- G. Carmichael read the case notes for the ZBA Board and audience present.
- P. Stenerson voiced in favor of rehearing and exhausting all other approaches before going to court.
- Carmichael read the advice provided by NH Municipal association. NH Municipal wrote that for a reconsideration to be granted, the applicant must demonstrate one or more of the following: 1: A procedural error occurred during the original hearing 2: Evidence was misinterpreted 3: New Evidence has become available that was not accessible during the initial proceedings.
- R. Thermos noted that the Board has not received compelling evidence to rehear the case.
- **G. Carmichael moved to deny the rehearing application for the following reasons; No procedural errors were identified during the original hearing, the evidence presented was interpreted accurately, and no new evidence has been introduced or made available that was not accessible during the initial proceedings. Additionally, Ratigan's November 5, 2024, letter to the Board states in his appeal: 'When there was an appeal to the Superior Court related to the ZBA and Planning Board's application approval decisions, the Superior Court in its January 31, 2024 Dawn Dunbar v. Town of Rindge appeal Order upheld the ZBA and Planning Board decisions.' (typo —it was January 31, 2020). However, on page 18 of the Superior Court's decision, the Court did not uphold the ZBA's decision. Instead, it refused to hear the matter, citing a lack of jurisdiction. The Court stated: 'Although Dunbar attended the public hearing on the variance, she failed to file a request for rehearing or appeal the ZBA's November 27, 2018 decision to grant the variance. Accordingly, the Court does not have jurisdiction to hear Dunbar's ZBA appeal, and her request is therefore denied.' Additionally, on November 4, 2024, Graz Engineering submitted a letter to the Board containing 'additional information.' However, this information was known at the time of the hearing and does not constitute new evidence that was unavailable during the initial proceedings. The motion was seconded by M. Breckenridge.**
 - **The Board voted in favor of the motion 4-1.**
 - **A rehearing therefore was denied.**
- Other business to come before the board – none noted
- Approval of minutes from October 22nd, 2024
 - G. Carmichael moved to amend the minutes under a voting section to be edited to reflect a 4-1 decision, eliminating names on one vote as there were no names on all the others.
 - The Board also discussed including a note in the minutes of Mr. Radigan's disruptive behavior during deliberations in the October meeting minutes.
 - M. Breckenridge moved to approve the minutes of the previous meeting as amended, seconded by M. Kulla. The Board votes to approve the minutes with members voting in favor 5-0.

Adjournment

- M. Breckenridge moved to adjourn the November 26 meeting, seconded by M. Kulla.
 - The Board voted to adjourn with members voting in favor 5-0.
- Meeting adjourned 9:25pm.

George Carmichael, Chair

Marcia Breckenridge, Vice-Chair