

RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
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PUBLIC HEARING MINUTES

DATE: February 26, 2019, Approved 3/26/19

*Regular members: Janet Goodrich (Chair), Marcia Breckenridge (Vice-Chair),
Phil Stenersen, Bill Thomas, Cynthia Childs*

Alternates:Joe Hill, Susan Wessels, Marty Kulla

Absent:.....Phil Stenersen, Susan Wessels, Marty Kulla, Cynthia Childs

Recusals:none

ZBA Clerk.....Michele Christian

*Others Present.....Michelle Davini (applicant), Roberta Oeser, Mike Kundert,
Jean Kundert, Albert Lefebvre, Mark Smith, Frank Dooley, Raymond Forget,
Barbara Forget, Chris Carreira, Theresa Carreira, Bruce Morrison, Nancy
Morrison.*

The meeting convened at 7:00pm with the Pledge of Allegiance.

The clerk announced where the notice of the Public Hearing was posted. Town office, police station, fire station, library, town website, post office.

Janet Goodrich announced that there were members missing due to illness. Kulla did not show up at meeting time. She asked the applicant if they would like to move forward with only four members of the Board instead of the normal five or if they would like to reschedule. The applicant wanted to move forward and have the case heard. The board moved forward with other business first to see if Kulla would arrive.

Review of Minutes of January 22, 2019

Hill noted corrections to the minutes of January 22, 2019 which were recorded by the clerk. Hill made a motion to accept the Minutes of January 22, 2019 as amended, Seconded by Breckenridge. VOTE 4-0-0

Goodrich announced that the Annual Planning Meeting will be held on June 1st in Concord. Registration opens at the beginning of March.

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James and Lisa Trautwein wanted advice for the Variance Application that they are going to file for a garage demolition and removing a paved driveway and replacing it with a gravel driveway. Janet directed Mr. Trautwein to Dave DuVernay to review the diagrams.

Hill read the case before the board:

Case # 1121: Michele Davini, 634 Old New Ipswich Road, Rindge, NH, Tax Map 17, Lot 1-3 and Tax Map 14, Lot 41 for a variance from Article IV, Section B2 and B3 of the Rindge Zoning Ordinance to permit a house to be built on a lot of less than 2 acres and closer than 50' to a private road and to request relief from restrictions of a subdivision decision in the Residential Zoning District.

Roberta Oeser presented the application information to the board. Oeser said that she spoke to Mike Kundert who is an abutter and his concern was that the waterfront lot would be transferred or made a public beach. The back lot and the front lot are considered one piece of property. Oeser asked that if relief is granted that restrictions be placed on the variance that the back lot can only be sold in conjunction with the waterfront lot, that it be considered one piece of property. In 1981 the waterfront lot was created by a subdivision. The parcel is 1.57 acres. According to the record this lot was considered a technical subdivision and to be considered part of another lot and could only have structures built on it in conjunction with the abutting buildable lot. The request for relief is to build a house on the back lot instead of the waterfront lot. The pair of lots was sold in 1992 with the right of way to the island, but the island was a separate purchase. Hill stated that the restrictions were placed by the Planning Board and those restrictions go with the land. Oeser stated the definition of a technical subdivision. She stated that it was very confusing that the Planning Board called it a technical subdivision when the two lots were not attached to another lot which is by definition what a technical subdivision is. Oeser said that the parcel was originally four lots. Goodrich asked if this was the original lots from 1955. They were camp lots. Hill stated that the restrictions that were placed on the property by the Planning Board go with the land. Dave DuVernay told Oeser that they are considered technical subdivisions and they cannot be built upon except in conjunction with contiguous land owned by an abutter. The waterfront lot is an abutting lot by definition even though it is separated by a road. What is in the tax records now is the backlot which is flagged non-buildable which is incorrect, because it can be built on in conjunction with an abutting lot. It is contiguous land that is on a private road. There was some discussion that I was not able to record because the persons speaking did not give their name and were cross talking with

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others rather than being recognized by the Board. The clerk respectfully asked the members of the audience to state their name and called upon to speak and to direct their comments to the Board and not others in the audience.

Mike Kundert asked if the town has been taxing the property as two separate lots, and now you are saying it is one lot. Oeser stated that they are taxed separately because they are on two separate tax maps. Oeser said that a technical subdivision is supposed to combine two lots that become one. Mike Kundert said that it should be taxable as one lot Oeser stated that it isn't going to be taxed as one lot because the tax maps are not going to be changed. Oeser try to explain it differently, but Breckenridge says it makes no sense that the land is taxed separately. Oeser said that it is because the lots are on two separate tax maps. Breckenridge stated that it is either one parcel or two. Oeser said that the tax maps don't determine the lot.

Mike Kundert asked if there are two separate deeds for the property. Oeser said that there is one deed that was transferred in 1992, tract 1 is the back lot and tract 2 is the waterfront lot and tract 3 is the right of way. The deed does not say that they must be sold together. There was discussion about the deeds and deed restrictions on the property.

Breckenridge asked if Oeser is equating one deed and one parcel and are they synonymous terms. Oeser said no but they should be because this was a technical subdivision which was supposed to attach part of the larger lot with the smaller lot and they never did that. Hill stated that just because you say should be it isn't therefore the Board cannot consider that. Oeser said that that the ZBA can finish what the Planning Board started which was to say that now this lot has been conveyed and is to be considered as a unit from now on. Breckenridge asked how the ZBA has the authority to do this. Oeser said to approve it and put restrictions that no building shall occur and the waterfront lot cannot be conveyed separately and be part of the back lot. Breckenridge stated that she is asking the Board to work around it and keep the ridiculous wording and not try to correct it. Oeser said that she is not asking the Board to work around it but to make it what it was supposed to be when it started. Breckenridge asked if we have the legal authority to make this one parcel of land. Goodrich stated that we have the definition of a technical subdivision that is dated 2011. This is not the definition of a subdivision that was in place at the time the parcel was subdivided. Oeser said that a technical subdivision is not supposed to create another lot and they did. Goodrich said that the technical subdivision is three lots that are not contiguous. There was discussion about the subdivision of the original four parcels. The subdivision was

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approved but they never said which lots they were. Breckenridge stated that we have no way of knowing what the intent is from the minutes from the meeting when the subdivision was approved. Oeser said that these three lots were nonconforming lots of record they were buildable lots.

Chris Carreira stated that the first restriction on the deed stated that the owner of any of those lots can't have any beach area access. He doesn't know how the town can allow beach access. Hill asked if the plans show where the house would be built. Oeser clarified the plans for Hill. Goodrich stated that the entire map with lots 40 – 53 and the term technical subdivision speaks only to four lots within that mass. As point one says these lots in this subdivision there is no common beach area or right of way to the lake.

Mike Kundert asked if there can be restrictions put on the waterfront lot that it could never be separated from the other lot by deed, sale or donation and that it is unbuildable forever. Goodrich stated that she understands the concerns of the abutters and the Board has to consider the impact on the rest of the neighborhood. Michele Davini stated that they also own the waterfront camp and they would not want anyone using their driveway for access to the water. Goodrich stated that any restrictions placed on the land go with the land.

Nancy Morison asked what the town requires for a buildable lot she thought in order to build there is a 2 acre minimum. Goodrich stated that this is why they are coming before the Board for a variance. In some areas of Rindge there are parcels of land that are under the 2 acre minimum and without allowing the owner to come to the ZBA to request a variance we would be saying that they could not use their land. Goodrich stated that there is another piece of the variance which is for the setback. Thomas asked about Lot 17 map 1 1-3 and which parcel it was. Goodrich stated that the request for the variance is for what we just discussed, but the other part of the request was to build on less than 2 acres and because of the unique shape of the parcel you would not be able to meet the setback from the boundary. Hill said that stated that he wondered why they were building on an area that is non-conforming. Oeser said that it is right across the street from the waterfront lot and that location is right in front of Mike Kundert's house. The land is elevated there and there is a low spot. Mike Kundert proposed that the house be on the LaChance side which would not obstruct any view. Goodrich stated that the diagram provided does not show any markings for the set back. There is a yellow line on the diagram which shows the 30 ft. setback. Goodrich stated that one of the questions is the level of non-conformity and you can't conform because of the shape of the land. Goodrich asked if there was a way to place the house on the

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land to make it less non-conforming. Michele Davini asked if they wanted the house placed further down the lot. Goodrich said yes where the front is wider. Michele Davini said if they move the house further down it is going to obstruct the view of everyone else's house. Oeser stated that the placement of the house will be less obtrusive to the neighbors and it will only really affect the house on Trout Lane. Mike Kundert said that what they are proposing is that the house be on the LaChance side which would not obstruct any view. Hill asked how much of the upper part of the property is unbuildable due to uneven ground. It was stated by someone in the audience who did not identify themselves that it was a considerable amount.

Goodrich asked if there was a possibility for the house to be moved up so that it isn't as close to the abutter and is less non-conforming. Oeser stated that this is an option. Hill asked where they are proposing to place the house. Oeser showed Hill on the plans and it appears that it would be less non-conforming.

Hill stated that they don't have decent measurements as to where the house will be going. Bruce Morison stated that when most people are getting a variance they need an engineered print for septic design as well as elevations and where actual holes are in the ground and anything that goes on that piece of property. Hill stated that is exactly what he was thinking. Oeser responded that the reason that they don't have a survey is because Carl Hagstrom said that the land would pass a perc test. Oeser stated that you can't just fill in the holes on the property because you will need permission from DES. Hill said that the drawings are very poor. Hill said that Oeser is asking for two variances one for relief from the restrictions of a subdivision, and the one for the house to be built on a lot of less than 2 acres and closer than 50' of a private road. The ZBA cannot make a decent decision if they don't have decent drawings. Goodrich said there is no plan that shows the precise location of the house. The setbacks and elevation of the property is critical. Goodrich said normally they receive a plan that has more specific detail. Thomas stated that the plans need to be more complete. Breckenridge stated that the case should be tabled until more information is received. Goodrich said that we could ask the applicant to continue to another meeting with more detailed plans that are consistent with what is needed to make a decision. Goodrich read the letter from Cynthia and Robert Childs who abut the property (included as part of these minutes).

Breckenridge moved to continue the case until more information is obtained tentatively scheduled for March 26, 2019 at 7:00 PM, seconded by Thomas.
Vote: 4-0-0

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Sitting on this case were Jane Goodrich, Bill Thomas, Marcia Breckenridge, Joe Hill will sit in for Stenersen.

Reviewers for the March hearing will be Hill and Thomas. The deadline for applications for March 26 2019 hearing is March 5, 2019.

Hill made a motion to adjourn the meeting seconded by Thomas. Vote 4-0-0

The meeting adjourned at 8:35 PM.

*Respectfully Submitted,
Michele Christian, ZBA Clerk*