



RINDGE BOARD OF ADJUSTMENT
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February 22, 2022, ZBA Meeting Minutes

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

Members present: Bill Thomas, member; George Carmichael, Chair; Marcia Breckenridge, Vice-Chair; Deni Dickler, member; Ross Thermos, alternate; Marty Kulla, alternate

Members absent: Phil Stenersen, member

Others present: Suzanne Hepburn, Julie-Ann Caron, David Drouin, Jed Paquin, and Karl Pruter

Carmichael provided the following general information about how the meeting would proceed. The ZBA has five voting members. Alternates participate in the testimony phase and can ask questions as can anyone from the audience. Once the testimony is closed only the voting members participate in deliberation. When a regular member is either absent or recuses, the Chairman appoints one of the alternates to sit on the case. Carmichael asked if there were any recusals and there were none. Carmichael announced that Marty Kulla would be seated to replace Phil Stenersen.

ZBA Clerk, Kim McCummings, announced that the notice of the Public Hearing was posted in the Ledger/Transcript, Town of Rindge Website, Rindge Post Office, the Rindge Town Office, and the Ingalls Memorial Library.

Carmichael reminded the audience they would have to be recognized by the Chair before speaking and asked that they identify themselves by stating their name, abutter status and address for the clerk.

Carmichael opened the hearing for Case 1180. Seated on the case were Breckenridge, Thomas, Carmichael, Dickler and Kulla.

Kulla read the following into the record. Case 1180: Jedadiah Paquin 361 Middle Winchendon Road, Rindge, NH 03461, and Steven A. Norby Revocable Trust, dated 1/14/1988, for property located at Dale Farm Road and Middle Winchendon Road, Map 2, Lot 52-1-2 in the Residential Agricultural District for a variance from Section 4G of the Wetland Ordinance to permit a residential driveway within a 50ft wetland buffer.

Dickler clarified that the Wetlands Conservation District includes the wetlands plus a 50ft buffer surrounding the wetlands and summarized the relative information from Section 4G of the Wetland Ordinance for the record.

Carmichael opened the testimony phase of the hearing and welcomed Jedadiah Paquin of Paquin Land Surveying and Septic Designer. Said they were trying to avoid crossing the wetlands with the driveway. Paquin highlighted the location of the wetlands, the proposed driveway to a second lot, and one lot with a new house on it. The intent is to be as far away from the wetlands as possible, and that a State Wetlands Permit will not be needed for that reason. Paquin also clarified the locations on the plan in response to questions from members of the audience.

Carmichael asked for clarification of the areas being referenced on the plans and Paquin located the areas in question for Carmichael. Paquin also mentioned that a special exception would have allowed for the crossing of the wetlands, but the variance would be needed to go through the buffer and the buffer is part of the Wetland District. Carmichael added that the variance is requested because you are discharging runoff within the 50 ft setback and Paquin agreed.

Paquin continued with the responses to the following questions on the application:

1. The variance would not be contrary to the public interest because it will decrease the impact to the wetlands. The alternative would be to go through the wetlands.
2. Granting the variance would do substantial justice because the Special Exception is an alternative means to achieving the landowners' goals, but in this case a Special Exception will have greater impact on the wetlands and thus a greater impact to the public." Steps have been made to minimize the overall impact to the drainage and you.

Can't drain 50ft away except for going through the buffer. Dickler asked for clarification of where the drainage would be going and Paquin said the drainage would be going exactly where it is today. Towards the street and the existing culvert pipe that crosses Dale Farm Road. The idea would be to use the existing drains.

3. The variance would be consistent with the spirit and intent of the Rindge Zoning ordinance because, it is more nearly conforming to the purpose and intent of the Wetlands Ordinance.

4. Granting the variance would not diminish surrounding property values because: The proposed driveway will allow for the use of the new lot and is consistent with the Residential Agricultural Zoning allowable uses and is the same use as the abutting properties.

5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship. Paquin said, in this case there are a lot of wetlands that restrict access and development along the frontage of the parent tract. He said that he did not do all the wetlands and pointed out a few locations that restricted access and those where the proposed lot would have access from Dale Farm Road and Middle Winchendon Road. He added that it was a steep slope, would not be desirable from a safety standpoint and would increase the overall runoff from the wetlands to have access from there, referring to the other slopes on the map.

Carmichael asked for additional questions, Dickler asked if the plan had been approved by the Planning Board. Paquin said nothing has been submitted to the Planning Board because he was waiting for a decision from the Zoning Board and would then go to the Planning Board.

Carmichael asked for additional questions from ZBA members, there were none.

Carmichael asked to hear from David Drouin, Rindge Conservation Commission Chair. Carmichael thanked Drouin for Con Com's letter, said it was very well written and asked if there was anything he wanted to add. Drouin said the applicant did a good job on the application that the plan looks logical and that he could have taken a Special Exception to go through the wetlands, but he's trying to avoid that.

He said if he had used the other wetlands on the lower property, it would have been a very steep driveway a larger crossing and the water would have sheeted off the road. Drouin went on to say that Dale Farm Road it's a very shallow slope they were fine going through the buffer for 4G, it was just where diverting the runoff and the slope, you can't make water run uphill. There's a ditch and a culvert down the road, it's a weird spot, and they could have taken the special exception going through the wetlands on Dale Farm just because of the 50ft. There's runoff to the road it's very shallow they were good on nine and a half out of ten items, he did a very good job.

Carmichael asked for additional questions from ZBA members. There were none and the audience was invited to participate.

Abutters Suzanne Hepburn and Julie-Ann Carron said they disagreed with the steep slope of the driveway going onto Middle Winchendon and that there were others that wouldn't be much steeper down to Quills. But they live on Dale Farm Road, mud city, it's a Class 5 road that is not maintained, "If there's more water it causes problems. The Town can't fix it, we have to fix it. There's another option they can come up between the old Specman property and his property. There are two other accesses that would not disturb the wetlands or Dale Farm Road, which is not maintained.

Breckenridge asked for clarification of the abutter's objection – "is the objection that there are other locales and if this one is chosen you will be harmed because of the mud coming down?" Hepburn and Carron responded that it was the amount of water and the way it would effect Dale Farm Road. Carmichael said "so you're concerned about the extra traffic with the other house". Hepburn and Carron said "no it's the extra water, and it's not diverted properly". The culverts don't work properly, and they have not been maintained since we've lived there.

Breckenridge asked to hear from Paquin, the engineer. Paquin outlined the following:

1. He had considered going between the new home and the Speckman Farm, but that would fall into the 50ft buffer, and require a special exception.
2. It would require a driveway easement off of Middle Winchendon Road. The preference is for the property owner to own the land. He said as a professional he sees it as a problem because of the confusion about issues of ownership in the

future, and it's still in the buffer. The easement would go with the land of one of the properties and not the other.

3. The Quills have a very steep driveway, probably about a 10% grade. This is a steep grade from an engineering standpoint it's not prudent when you can have a 3-5% grade. From the safety standpoint it wouldn't be good. They're right the water runoff would not go into the road but would go into the wetlands.

Kulla said Jed explained it well and he agreed with him. Dickler asked if Dale Farm Road was a class 6 Road. The response was that is a Class 5 to a certain point then becomes a Class 6. This portion of the road is Class 5.

Hepburn said she's never seen it wet there and called the State EPA to get information. Carmichael said Hagstrom is a Certified Soils Scientist and the letter reflects areas with the least amount of impact. Carron said she didn't understand how they are delineated as wetlands when not wet.

Paquin said they are included in the Town Wetlands map. Drouin said the wetlands are delineated by soil types, and vegetation. Soil scientist must be licensed by the State and hired by the property owner, and they are conservative more often than not. Just because land is designated as wetland doesn't mean it will always look wet.

Hepburn said that probably 8 or 9 months of the year there's a river of water flowing down Dale Farm Road. It's not just from the wetland, it comes down to our driveway. Carmichael said it sounds like a Town maintenance issue more than anything. Hepburn said she's always been told the water is lower than the culvert and won't go through it.

Carron asked so there's no way we could have someone look at the road. Paquin said that would happen at the Planning Board.

Dickler asked if property was sold to Mr. Norby because Mr. Bacon was not allowed to put in a driveway there. Are you aware if there were any deed restrictions or covenants? Carron said, I don't know he worked on it for a while and gave up.

Carmichael asked for additional comments and there were none. Carmichael asked for a motion to enter deliberative session. **Motion:** by Breckenridge to enter deliberative session. **Second:** by Thomas. **Vote:** 5-0-0

The Board entered deliberative session. Carmichael said there are concerns from abutters regarding possible impact on their property, but there is no evidence. Breckenridge said she needed clarification on next steps. Carmichael said the Planning Board will see that we either approved or didn't approve. They will either say yea or nay. Thomas said there's some problem with the road but the minimal impact for a driveway. Dickler said she's sensitive to the neighbors' issues, but it's not something that can be addressed for the variance. They addressed the driveway relative to the wetlands as well as it could be addressed. Kulla said he agreed with Dickler and Thomas and mentioned the frustration of the road situation for abutters but it's the least amount of impact given the grade change. The applicant put in a lot of work and time figuring the best approach given the grade of the property.

Carmichael said it sounded like everyone was in agreement and motioned to approve Variance Application number 1180 based on the responses on the application as written. They have defined the five criteria quite well, each criterion has been detailed, and the explanations were well done.

Breckenridge asked if during the thirty-day appeal process a professional comes and says the value would be affected, what happens. Carmichael said it is based on what came in at the time of this hearing.

Kulla seconded the motion. Dickler suggested adding to the decision a statement that the variance is approved for a driveway that passes within 14ft of the wetlands and with discharge going to the existing culvert. Carmichael suggested editing the statement to read: To approve the variance as worded in the application for a driveway off of Dale Farm Road that passes within 14ft of the wetlands and with drainage diverted into existing culverts. **Motion:** by Carmichael to approve the variance as worded **Second:** by Kulla **Vote:** 5-0-0 the variance is granted.

Carmichael opened the hearing for Case 1181. Seated on the case were Breckenridge, Thomas, Carmichael, Dickler and Kulla.

Kulla read the following into the record. **Case 1181:** Jedadiah Paquin 361 Middle Winchendon Road, Rindge, NH 03461, and Steven A. Norby Revocable Trust, Dated 1/14/1988, for property located at Dale Farm Road and Middle Winchendon Road, Map 2, Lot 52-1-2 in the Residential Agricultural District for a variance from Article V, Section B.1, of the Zoning Ordinance to permit a new building lot to be less than 250 ft. of uninterrupted length of frontage.

Breckenridge summarized the relative information from Article V Section B.1. of the Zoning Ordinance for the record.

Carmichael opened the testimonial phase of the hearing and asked Mr. Paquin for an overview of why the variance was being requested. Paquin said from a professional standpoint the reason I'm requesting is that we can achieve a 250ft of frontage along Delmont Road. When the client chose to put the driveway here, he didn't want a steep driveway he wanted a nice gradual driveway so there would be no issues with slopes, and it was away from the wetlands. The client has two daughters one on each of the lots along Delmont Road. He didn't want a steep driveway he wanted a nice gradual 40% driveway. The net end goal is to have 250ft of frontage that's uninterrupted. He wanted to avoid a flat lot. The net end difference from the zoning perspective is the same, there will only be two lots.

Carmichael asked what the frontage was on the lot. Paquin said its 139.95ft on Dale Farm Road and approximately 120ft on Middle Winchendon Road which exceeds the 250ft requirement. Paquin said that he didn't realize the frontage had to be uninterrupted frontage which is why he is before the Board. Dickler asked if the address of the house was on Middle Winchendon or Dale Farm Road. The proposed lot 2 would be affected by the daily use of lot 1. The net between the two is 250ft. Breckenridge said we're still adhering to the 250ft. Even though the Town says they can't be interrupted we're seeing two town lots with 250ft of frontage. Drouin said the ordinance that would reject it applies to lots of less than 250ft of frontage.

Carmichael asked Paquin to go through his responses to the five criteria.

Paquin went through the five criteria:

1. The variance would not be contrary to the public interest because:
A two-lot subdivision can be achieved by an alternative lot configuration that would require a driveway easement.
2. Granting the variance would do substantial justice because: The proposed project is able to be permitted with or without a variance. In my professional opinion, the public is better served because this proposal eliminates the need for a driveway easement. Driveway easements are more frequently a cause of ownership confusion or conflict than boundary lines are.
3. The variance would be consistent with the spirit and intent of the Rindge zoning ordinance because: The proposed project will be constructed in the same location whether or not this variance is granted. In my professional opinion, it will circumvent potential confusion/conflict between landowners regarding their rights and responsibilities related to the driveway easement.
4. Granting the variance would not diminish surrounding property values because: The proposed use of the new lot is consistent with the Residential Agricultural allowable uses and is the same use as all abutting property uses.
5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship. There are a lot of wetlands that restrict access and development along and near the frontage of the parent tract.
 - 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: The parent tract has a lot of contiguous frontage that is deemed undevelopable by the wetlands ordinance.
 - b. The proposed variance would be a reasonable one because: It will allow for development of the land in a manner that is generally consistent with the spirit and intent of the zoning ordinance and that in my professional opinion better serves future landowners.

Carmichael motioned to enter deliberation. Second by Thomas. **Vote:** 5-0-0

Breckenridge said it boils down to adhering to what the voters want. We are adhering to that. Carmichael said it is not contiguous, but it does have 250ft on two contiguous roads. Marty said the Town has rules and regulations, in this case it's 250ft of frontage. Kulla said he thought it's the boards' duty. We're allowed to make exceptions as long as we go through the criteria. We're just taking out the word "continuous". Thomas said that's our job to take a situation like this and figure the best way when we have people like Deni that help us to make it sound right that's what we should be doing.

Motion: by Thomas to approve the variance as written but note that it has 250ft of frontage but it is not continuous. **Second:** by Dickler **Vote: 5-0-0**

Other business:

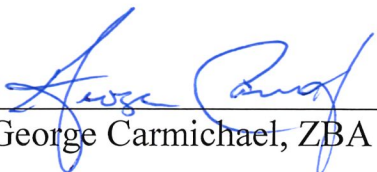
Minutes: Dickler moved to approve the minutes of January 25, 2022 as amended. **Second:** by Carmichael. **Vote: 5-0-0**

Dickler suggested a minor update to clarify application instructions. Kim will draft something and send it out to members.

Motion: to adjourn by Breckenridge, **Second:** by Thomas **Vote: 5-0-0**

Meeting adjourned 8:28pm

Kim McCummings, ZBA Clerk


George Carmichael, ZBA Chair

