

July 27, 2021 ZBA Meeting Minutes

Members present: George Carmichael, Chair, Marcia Breckenridge, Vice-Chair, Deni Dickler, member, Bill Thomas, member, Phil Stenersen, member, Marty Kulla, alternate

Others present: Thelma Zelen, Sandy Zelen, Ross Tourigny, Mathew Mues, David Drouin, Richard Mellor, Sandra Bezell, Dennis Bezell, Ashley Saari, Judy Unger-Clark

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

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. Only the 5 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 for the evening's cases and there were none.

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

Carmichael opened the continued hearing for **Case 1171**: Kulla read the case into the record. Dennis C. Buzzell, 15 Surry Park, Rindge, New Hampshire, Map 27 Lot 19 in the Village District, for a Variance from Article VI, Section III 2 Frontage, Yard and Area Requirements, and Article 13 Paragraph E, to install a storage shed on the property. Dickler summarized the relevant ordinances.

Sitting on the case was Breckenridge, Stenersen, Thomas, Dickler and Carmichael.

Carmichael reminded that the hearing was continued because an abutter was omitted from the list of individuals to be noticed for the hearing and asked

for questions before moving to deliberation. Dickler asked about the placement of the shed and the applicant indicated that the septic tank is on the other side of the yard and there is also a downward slope on that side of the property. There were no additional question from the audience. **Motion:** by Carmichael to enter deliberative session **second:** by Breckenridge. **Vote:** 5-0-0

The board moved to deliberative session and determined that.

1. The variance would not be contrary to the public interest because it upholds the public interest, no abutters have objected, others on Surrey Road have sheds and it is a small existing lot.
Motion: by Breckenridge, **second:** by Carmichael **Vote:** 5-0-0
2. Granting the variance would do substantial justice because it gives the applicant the opportunity to use the property in a reasonable manner.
Motion: by Breckenridge, **second:** by Carmichael **Vote:** 5-0-0
3. The variance would be consistent with the spirit and intent of the Rindge Zoning ordinance because the distance between the proposed structure and the neighbor's property is a substantial distance. It takes into consideration the neighbor and the property owner's needs.
Motion: by Stenersen, **second:** by Thomas **Vote:** 5-0-0
4. Granting the variance would not diminish surrounding property values because it is consistent with the other surrounding properties and there were no objections.
Motion: by Dickler, **second** by Carmichael **Vote:** 5-0-0
- 5-a. No fair and substantial relationship exists between the general purpose of the zoning ordinance provision(s) and the specific application of the provision (s) to the property because: N/A
- 5-b. The proposed variance would be a reasonable one because other property owners have sheds like the applicants, and it is a non-conforming small lot.
Motion: by Breckenridge, **second:** by Stenersen **Vote:** 5-0-0

Motion: by Stenersen to grant the variance because the proposed shed is located within two feet of the property line. **Second:** by Thomas **Vote:** 5-0-0

Motion: by Carmichael to amend the motion to read to grant the variance because the proposed shed is located within two feet of the property line and the five criteria have been met. **Second:** by Dickler **Vote:** 5-0-0

The Variance is Granted

Chairman Carmichael suggested the applicant wait for 30 days before doing anything on the property and that he would be receiving a copy of the decision in the mail.

Carmichael opened the continued hearing for Case 1172

Case 1172. Kulla read the case into the record Ross R. Tourigny, Builder, 86 West Main Street, Rindge, NH 03461 for Thelma Zelen, 162 Swan Point Road, Rindge, NH 03461, in the Residential Agriculture District, for a Special Exception as specified in the Accessory Dwelling Unit Ordinance, Section 2. Thomas summarized the relative ordinances.

Sitting on this case was Breckenridge, Stenersen, Thomas, Dickler and Carmichael.

Carmichael asked Mr. Tourigny to provide a summary of where things left off last month and Mr. Tourigny said that after reviewing the information on the tax card it appeared not to be in agreement with the measurements submitted on the plans that were submitted. The board reviewed the plans and the information from the Tax Card and were able to determine the applicant was proposing a measurement of approximately 1,020 for the proposed ADU which is less than 1/3 of the 3,284sq/ft. for the home as required in the ADU Ordinance. Carmichael asked for additional questions and there were none **Motion:** by Breckenridge to enter deliberative session, **second:** by Thomas **Vote:** 5-0-0

Carmichael said the original documents seemed not to be in agreement with the information on the tax cards but do seem to agree with 30% required for the ADU. Carmichael asked to move to the Special exception s

The board entered deliberative session for the Special Exception and determined:

1. The Board found that use will not create excessive traffic, congestion, noise, or odors because it is on a large four-acre lot and is a one bedroom ADU with sufficient parking and sewer. **Motion:** by Dickler, **second** by Carmichael **Vote:** 5-0-0
2. The proposed use will not reduce the value of surrounding properties because there has been no testimony to demonstrate that it would do so. **Motion:** by Breckenridge, **second:** by Carmichael. **Vote:** 5-0-0
3. There is adequate sewage and water facilities, and sufficient off street parking is provided by the applicant. Testimony has been received that the septic system will be upgraded to support the new structure. **Motion:** by Breckenridge, **second:** by Carmichael. **Vote:** 5-0-0
4. The proposed use will preserve the attractiveness of the Town because the plans show that the structure will be out of sight and will be an attractive building.
Motion: by Thomas, **second:** by Carmichael. **Vote:** 5-0-0

Motion: by Breckenridge to grant the Special Exception because all four criteria have been met. **Second:** by Stenersen **Vote:** 5-0-0

The Special Exception is Granted

Carmichael told Mr. Tourigny he would be receiving a written notice of decision within in a few days, and the decision would be filed with the Cheshire County Register of Deeds. He also suggested the applicant wait 30 days prior to starting construction on the project.

Carmichael opened Case #1173 a meeting to determine the status of the request for a rehearing of Case # 1165. He spoke to Attorney Laura Spector-Morgan and was advised to stick to the six points listed in the document from Attorney Ratigan. If there is anything that convinces the board that an error was made in law or in fact then yes rehear the case, if no, then deny the rehearing. Breckenridge asked for clarification that the focus should be the 6 items listed in the document from Attorney Ratigan. Carmichael said yes.

Carmichael that the focus of the discussion would be the six points listed in the document submitted by Attorney Ratigan and opened the discussion.

1. Navian contends that the Board erred in denying the special exception on grounds that the applicant had not proved that the proposed use would not conflict with the Wetlands Conservation Ordinance. The applicant submits that Fieldstone Engineering presented a substantial amount of information in the form of testimony about discussion with and direction received from the Town Planner about what type of work had been historically allowed and approved by both the Planning Board and the ZBA (in granting special exceptions for wetlands crossing and work within 50' wetlands setback) in the Wetlands Conservation District.

Carmichael opened the discussion. Thomas said the issue was that they had a drainage swale which emptied out into the 50ft buffer. That was our main reason for the denial. The plan did not meet the Wetlands Ordinance because that drainage swale was still within the 50ft buffer. Dickler said they noted discussions with the Town Planner about what had historically been allowed and approved by the Planning Board and the ZBA. From the cases I have observed from the ZBA there has not been approval of drainage in the 50ft setback. There may have been approval by the Planning Board, but not the ZBA. Carmichael said every case is different and they are reviewed in isolation, and that decisions are made based on the merits of each case. Thomas said that we tend to make decisions on a case-by-case basis. In this case we asked specifically if there were proposing drainage within the 50ft setback, and they said that they were.

2. That the Planning Board has for a long period of time interpreted the Wetlands Conservation District Ordinance to permit such uses in the Wetlands Conservation District. The applicant contends that under the New Hampshire administrative gloss doctrine of statutory and ordinance interpretation, the Planning Board's interpretations that are reflected on the plans that were presented to the ZBA by the applicant supports the Planning Board's interpretations of the Wetlands Conservation District ordinance that grading, drainage and other work done within the 50' wetlands setback as depicted on the Navian Plan, and on multiple plans presented to the ZBA by the applicant. Navian contends that the ZBA erred in not recognizing the long standing interpretations of the ordinance by the Planning Board that

were reflected in the previously approved plans that all such uses in the wetlands setback were permissible.

Thomas said this is a case-by-case basis. We approve or disallow cases based on the evidence. In this particular case, they are not conforming to the Wetlands Ordinance they are having the drainage in the 50' buffer. We asked the applicant's engineer specifically if any part of this was in the 50ft setback and the response was yes.

3. Navian contends that the record before the ZBA demonstrates that it did meet the requirement of Special Exception section 5 and that it did "prove the proposed use would not conflict with Wetlands Ordinance" and that the Board erred in not recognizing the applicant satisfied this condition. Carmichael said they in fact proved that they are in conflict with the Wetlands Conservation Ordinance. When we asked them they specifically said they were proposing drainage within the 50ft setback.

4. Navian contends that the ZBA erred in not following the language of its ordinance in addressing whether the applicant complied with Section 6, which states in part: "The Board of Adjustment may grant a Special Exception under this section if the proposed use does not conflict with the purpose and intention of Section 2 of this ordinance...".

Breckenridge it said this was already addressed. She added that the word is "may" it doesn't say must, and it is at the discretion of the ZBA's judgement. Carmichael added that it also in fact does in fact conflict with the Wetlands Conservation Ordinance.

5. The Petitioner also contends that it has not been able to obtain from the Town a copy of either JBA's June 2, 2021, meeting minutes, or certain other 2020 meeting minutes that it sought to review, prior to the filing of the request for hearing, as such minutes were not available from the Town.

Carmichael asked if Attorney Ratigan has the meeting minutes now and the clerk confirmed that both sets had been sent to Attorney Ratigan, and the delay in releasing the minutes was due to logistical issues that have since been addressed.

6. The applicant contends that the ZBA erred in proceeding with the review of this application by including member Dickler as a seated member of the ZBA. Attached is a copy of the Conservation Commission's January 28,

2021 meeting minutes, which discuss on page 1 the Commission's concerns about the project, and that members "Dickler and Drouin will draft a letter to send to the Planning Board.

Carmichael said that we now know from testimony that Deni Dickler was not involved in the drafting of that letter, and that David Drouin, Chair of the Conservation Commission, wrote the letter and drafted the meeting minutes. Dickler said she has not involved in the drafting of the letter. She never said that she was opposed to Navian Development, she spoke to requirements that the Planning Board was not addressing and said that her view has been that we have regulations, and they should be followed.

Carmichael said that's the last point that they made and asked the Board if there was anything that convinces them that we made an error in Law or in fact. Thomas said no, Breckenridge said no, Dickler said no.

Motion: by Carmichael that the request for rehearing be denied because the Board did not make an error in law or in fact. **Second:** by Thomas

Vote: Aye: 4-0-0, Nay: 1-0-0

The request for a rehearing is Denied

Approval of Minutes of November 24, 2020, May 25, 2021, and June 22, 2021. **Motion:** by Dickler to approve the minutes. **Second:** by Carmichael. **Vote: 5-0-0** the minutes are approved.

New Business

Breckenridge gave an update on the status of the ZBA office space and read a letter to the editor into the record.

Dickler provided an update on the budget and the upcoming meeting about the budget.

Review of Rules of Procedure - moved to the August meeting

Zoning Clerk will be drafting meeting agendas for the public starting in August

Other business that may come before the board.

Motion to adjourn