

ZBA Meeting Minutes, Wednesday, June 2, 2021

Meeting called to order at 7:01pm by Chairman Carmichael.

Carmichael reminded the Board that the meeting was a continuation of Case 1165.

Carmichael motioned to continue the deliberation of Case 1165. Breckenridge seconded the motion. **Vote:** 5-0-0

Carmichael said that at the May 25th meeting the first 4 items had been completed and there was agreement that item #3 was not applicable to this case, and at #5 on the special criteria we needed to focus on Section 5A. Carmichael reminded the Board that Laura Spector-Morgan of Mitchell Municipal Group suggested that we focus our attention on the authority and purpose of the Rindge Wetlands Conservation District Ordinance. Prove that the proposed use will not conflict with the purpose and intent of the Wetlands Conservation District Ordinance. That is clearly, she points out, in Section 1. Look at Section 1 and see if what they are applying for meets the purpose and intent of the Rindge Wetlands Conservation District Ordinance. Carmichael asked if everyone was in agreement with the overview and all agreed.

Carmichael said that he had done some research and in Section 1 when proving that the proposed use will not conflict with the purpose and intent of the Rindge Wetlands Conservation District Ordinance if you look at 1.B Authority and purpose, Section 1, B clearly states... that *“By preventing the destruction of wetlands, because they provide flood protection, flood control, water quality protection, natural habitat and food supply for wildlife and fisheries, storm water detention, groundwater recharge, pollution attenuation, carbon sequestering, sediment trapping, chemical and organic waste removal, watershed stability, education and recreation.”*

Carmichael added that we do have the discharge from the water treatment that, as was pointed out by Mr. Chamberlain, is in fact inside the 50 ft. set-back. What the Conservation Commission is saying is the buffer is no less valuable than the wetlands it is adjacent to. Dickler said the Wetland includes the Conservation District and also includes the 50ft buffer and Carmichael agreed with the statement.

Stenersen said that as part of that one of the allowed uses is streets, roads and utilities that can go in the wetlands and the wetlands buffer zone. Dickler said yes, but however; it also specifically states that any storm water drainage must be diverted away from the Wetland District. Stenersen said if we wanted to include a condition. The water flows downhill, it's diverted away from it, by their plans, and then rolls back to it because of the berm and the swale diverts it away. Obviously it's going to eventually roll downhill at some point. That's an allowed use in the Wetland District its roads of and utilities. Carmichael said, but not a discharge for a water treatment. Stenersen said but it has to get there eventually. Dickler said she agreed with Stenersen that the water would eventually get there. But the dilemma is that these are requirements and whether we like them or not it's what we live with and they specifically state, that the water must go away from the wetlands, including the runoff from the buffer, and I'm not seeing that in the pictures. Stenersen said so the concerns are not the road itself, which obviously is an allowed use, but the way the swales and the way the water is running. Carmichael said the swales and where the water are both in the 50ft setback. According to the Town of Rindge Wetlands Conservation District Ordinance, in section 2, it spells that out. They don't see the 50 ft. setback buffer as being any less valuable than the wetlands themselves, they are in fact all one. Stenersen said and yet time and time again we've allowed activities to go on in that 50ft buffer. Carmichael said I don't know if that's accurate, I'm not saying you're wrong. On this particular case, according to Mr. Chamberlain, they are in, or they are all within the 50ft setbacks. We did hear the applicants engineer clearly state that, because I asked the question towards the end and he said yes they are. Stenersen said, so the roads and utilities are obviously okay because they're spelled out in it, but the swales and discharge are not allowed. Carmichael said, that's how he sees it.

Thomas said in 4G it says... Carmichael said lets be careful with 4G. Our attorney said that's clearly areas where if the Town decides to focus on, that's variance material, not special exception. Thomas said the discharge should be at least 50 ft. away from vegetated wetlands, and they are not. Carmichael said if they wanted to address that they would need a variance Stenersen suggested offering a special exception subject to the conditions that discharge has to be 50ft away and the swale can't be in there and if they can't meet the conditions they have to come back for a variance.

Dickler said, an alternative is to disapprove. They can come back with a different design that eliminates the problem. Carmichael said that makes it a lot cleaner.

Stenersen said I don't see the need denying something that's clearly allowed in our regulations. Carmichael said it's not allowed. Stenersen said, sure it is, roads and utilities are clearly allowed in our regulations. Carmichael said we're not talking about roads and utilities we're talking about the discharge from the water treatment. Stenersen said, but that's one small portion of the overall application. Carmichael responded, then it should be easy to correct. Stenersen said, so if they can correct it they're done and if they can't correct it, then they have to come back for a variance.

Breckenridge asked how we would know that they did it. How do we know it's been enforced? Carmichael said the checks and balances in any town is the code enforcement. Breckenridge said, I'm a little concerned that we pass something and we never know.

Carmichael said, in this case they have to come back with a plan that shows it has been reengineered, and the discharge has to be outside of the 50 ft. buffer. Breckenridge asked how involved can it be to make a plan-B to accommodate this. Surely they must have given some thought to it. Stenersen said anything is doable.

Carmichael asked for additional comments. Thomas said he was leaning towards the suggestion to come back with a better plan.

Carmichael made a motion to deny the Special Exception because it did not meet all applicable criteria in Section 5A of the Rindge ZBA decision tree. The applicant could not prove that the proposed use would not conflict with the purpose and intent of the Wetlands Conservation Ordinance. Second by Thomas **Vote:** 4 - 1-0

Stenersen said we should tell the applicant why. Carmichael said that a letter would be sent.

Motion: by Carmichael to deny the Special Exception because it did not meet all 5 criteria. Second by Thomas **Vote:** 4-1-0

The Special Exception is denied

Motion to adjourn by Carmichael, second by Thomas. **Vote:** 5-0-0.

Respectfully Submitted

Kim McCummings

ZBA Clerk