



RINDGE BOARD OF ADJUSTMENT
30 PAYSON HILL ROAD
RINDGE NH 03461
PH. (603) 899-5181 x 100 FAX (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

April 26, 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: Phil Stenersen, member; Bill Thomas, member; George Carmichael, Chair; Marcia Breckenridge, Vice-Chair; Marty Kulla, member; Ross Thermos, alternate.

Members absent: None

Others present: Sally Dunbar, Dawn Dunbar, Eric & Samantha Seppala, Judy Unger Clark, Tom Coneys, Terence Fogg, Sadie Halliday, Jason Gorman, David Drouin, John Ratigan, Kim & Bruce Gavigan

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. He added that once the testimony was closed only the five voting members would participate and there would be no more input from the public. He asked if there were any recusals, Phil Stenersen said he would be recusing himself from Cases 1182 and 1184. Carmichael asked Ross Thermos to sit on the two cases.

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 said that he would like to open the cases in a different order because Cases 1182 and 1184 would take more time and made a **motion:** to move case 1185 before cases 1182 and 1184 because the latter two cases would take a longer amount of time. **Second:** by Breckenridge. **Vote:** 5-0-0

Breckenridge read the case into the record. **Case 1185:** Eric Seppala, 22 Dianas Way, Rindge, NH 034671 for property located at Converseville Road, Map 7 Lot 96-3, Alotek Subdivision, in the Residential Agriculture District, for a Special Exception as specified in the Accessory Dwelling Unit Ordinance.

Stenersen read information from the purpose section of the Accessory Dwelling Ordinance into the record.

Carmichael announced that Stenersen, Thomas, Kulla, Breckenridge, and Carmichael would be seated for the case.

Carmichael asked Mr. Seppala to present his information. Mr. Seppala said that adding the ADU wouldn't change the outer appearance of the single-family dwelling, and it wouldn't be creating additional traffic or noise. It will have a new septic and it meets the square footage requirement. Carmichael asked for the sq ft information for the building and what will be used. Seppala said the total is 2,869 sq ft that leaves 33% or 955sq ft for the apartment and the plan for the apartment is 928sq ft. Carmichael asked for additional questions from the Board. There were none and he asked for a motion. **Motion:** by Breckenridge to move to deliberative session and consider the decision tree. **Second:** by Carmichael, **Vote:** 5-0-0. Stenersen asked if there were comments from the audience. There were none and the Board entered deliberative session.

Carmichael asked for any questions or concerns from the Board, there were none. Carmichael motioned to accept the Special Exception application as written, second by Stenersen, Breckenridge added that the record should reflect that all the decision tree requirements of the use were reviewed as part of the consideration of the application. Specifically, that the use will not create excessive traffic, congestion, noise, or odors; will not reduce the value of surrounding properties; that there is adequate sewage, water facilities and parking; and the proposed use will preserve the attractiveness of the Town.

Vote: 5-0-0 Carmichael advised Seppala that there is a 30-day period for someone to appeal the decision.

Special Exception is approved

Carmichael told the applicant that he would receive a copy of the decision, and that he should wait 30 days before doing anything in case anyone files.

Letter from NH Municipal was read into the record, (See NHMA letter attached).

Carmichael introduced Case 1182. Seated on the case were Breckenridge, Thomas, Carmichael, Kulla and Thermos

Kulla read continued Case 1182 into the record. **Continued Case 1182:** Timothy Halliday, 30 Hughgill Rd. Rindge, NH 03461 for property located at 442 Middle Winchendon Road and Dale Farm Road (Knights Lane), Map 2 Lot 46 & Map 2 Lot 54, in the Residential Agriculture and Business Light Industry Districts, for a Variance from Article V Section B1 of the Zoning Ordinance to permit a lot in the Residential/Agricultural District to have less than 250ft of frontage.

Thermos summarized Article V Section B1 and Article XX -17of the Zoning Ordinance.

Carmichael opened the testimony phase and Tim Halliday described his plan to combine the frontage from one conforming and one nonconforming lot to create frontage for two conforming lots. One lot has 40 acres and the other has 4.5 acres. His plan is to make the non-conforming lot more conforming and create two house lots. Halliday said he was proposing a lot line adjustment between both lots. Create a new lot one with 34 acres in the Residential Agricultural Zone and the other lot currently has extensive road frontage in the Business Light Industry Zone. One lot has over 500ft of frontage on Rte. 202, which is not accessible, and the other 1400 ft. of frontage on Dale Farm Road. With the two lots he plans to create two conforming lots and one lot would be more conforming than the other.

Thomas asked about the frontage on Middle Winchendon Road. Halliday said it has 150ft of frontage. The house at 442 will be taken down and that it is the safest spot to enter from Middle Winchendon Road.

Carmichael asked if there were additional questions from the Board. There were none and he asked for questions from the audience.

Bruce Gavigan, an abutter, said that he lived right across from that spot and asked if the plan was to make an entrance and an exit there. Halliday said yes. Gavigan said it was pretty much across from his driveway. Carmichael asked Halliday to show the Board where the entrance would be located on the plan and Halliday pointed it out. Kim Gavigan presented photos from her front door, near the end of her driveway, and another from the end of her driveway. She expressed concerns about the impact of the proposed road access on her driveway access, that there is a blind corner when driving from one direction and a blind spot from the other when traveling on the road, and concerns about the impact on property values.

Carmichael asked how the proposed driveway would be located related to the existing driveway. Halliday said it would be further down, and in Gavigans driveway it's the inside of the corner and you're blind from there. From the other side of the road, it's the outside of the corner and the visibility on the road is different. Breckenridge asked Halliday how many cars he anticipated would be using that proposed driveway, because it makes a difference if it's two or three or 15 or 20. Halliday said that at this point in time he had no idea. Carmichael asked if there were any more questions and George Quill said that the corners a death trap and asked a question about the difference in names Knight Lane and Dale Farm Road. Carmichael responded that Dale Farm is a Class 5 road and Knight Lane is a Class 6.

Judy Unger Clark asked about age of the house that is to be taken down. It was estimated to be 100 years plus. She also suggested the board do a site visit. Quill said she agreed with the site walk suggestion before any decision is made. Quill also mentioned that she thought Halliday should have gone to the Planning Board first so that the ZBA could have a better idea of what he wanted to do with the property. Halliday said that he went to the Planning Board and was told that he would need to go to the ZBA for a variance first.

Tom Coneys said he got involved because he's concerned about the taking of land designated for Business use being taken for Residential use. Quill said what he's really trying to do re-zone the Business Light Industry District.

Attorney Ratigan pointed out the lots involved in trying to gain access without going through the wetlands. This application is seeking a variance to allow the consolidation of the two lots it's a variance on lot 46. The second variance is concerning the issue of use a separate lot would be created for that. Thomas asked does lot 54 exist. Attorney Ratigan said yes, and pointed out the area of Lot 54 on the map.

Motion: by Thomas to go into deliberation, **second:** by Breckenridge. **Vote:** 5-0-0

Breckenridge said she would like to do a site visit. She said she could look at it but would prefer to see it in person. Carmichael canvassed the members and voted to determine if they would do a site walk. Four of the five members felt that given the information presented there was no need for a site walk. The Board entered deliberation.

Carmichael said that based on the information presented the applicant answered all of the questions and demonstrated the best way available to do so. Thomas said it's the best location to access the property. Kulla said it seems like the most logical decision. Carmichael said he was going to present a motion to go through the decision tree as presented in the document presented by Attorney Ratigan. Following a brief discussion, the Board decided to review each response and vote on it separately.

1. The Variance would/would not be contrary to the public interest because:

The granting of the variance will not be contrary to the public interest as it will not alter the essential character of the neighborhood, nor will it threaten public health, safety or welfare.

Motion: by Carmichael, **Second:** by Thomas **Vote:** 4 – 1- 0

2. Granting the variance would/would not do substantial justice because:

Granting the variance would do substantial justice, if the variance is not granted, that would create an injustice, as it would result in a loss to the individual applicant that is not outweighed by a gain to the general public. This lot currently doesn't have adequate access to a Class V Road. This variance would help provide

such access for Lot 46. This proposed residential development and provision of Class V Road access to Lot 46 is consistent with the residential use character of lots in the area that are zoned Residential Agricultural.

Motion: by Carmichael **Second:** by Thomas **Vote:** 5-0-0

3. The Variance would/would not be consistent with the spirit and intent of the Rindge Zoning Ordinance because:

Granting the variance would observe the spirit of the ordinance, as it will not alter the character of the Town, nor will it threaten the public health, safety or welfare.

Motion: by Thomas **Second:** by Kulla **Vote:** 5-0-0

4. Granting the variance would/would not diminish surrounding property values because:

Granting the variance will not diminish the value of surrounding properties as it would enable access to this large residential parcel for the same residential use that exists on the neighboring properties in the Residential/Agricultural zone and there is no data to support the loss of property values.

Motion: by Thomas **Second:** by Breckenridge **Vote:** 5-0-0

5. Special conditions do/do not exist on the property that distinguish it from other properties in the area, such as the literal enforcement of the ordinance results in unnecessary hardship,

Literal provisions enforcement of the ordinance would result in unnecessary hardship, as this property, once upon a time, had frontage on a Class V Town road that overtime transitioned to a Class VI Road. And the parcel was bisected by a zoning amendment that placed a portion of the property in the Business/Light Industry zoning district which did not provide Class V access to the larger residential portion of the lot. These changes did not affect all the other residential properties in the neighborhood.

Motion: by Thomas **Second:** by Breckenridge **Vote:** 5-0-0

- 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:

Given the location of the property and the zoning change that occurred years ago, granting the variance will enable the property to move toward the general purposes of the zoning ordinance by relieving the property from having to satisfy a 250' Class V road lot frontage requirement which would enable the lot to be used for residential purposes and is a reasonable manner, that is currently constrained by the lack of 250' of frontage on a Class V Town road.

Motion: by Thomas **Second:** by Carmichael **Vote:** 5-0-0

- b. The proposed variance would/would not be a reasonable one because:

The proposed use is a certainly a reasonable one, as it will cure the fact that the residential portion of the property does not have 250' ft of frontage on a Class V Road, and it will enable the property to be put into its intended residential use.

Motion: by Thomas **Second:** by Kulla **Vote:** 5-0-0

Motion: by Breckenridge to approve the variance as it has satisfied all five criteria.

Second: by Carmichael **Vote:** 5-0-0

The variance is granted because it has satisfied all five criteria.

Carmichael announced the case was approved and reminded Tim that there is a thirty day appeal window and he would be taking a risk if he did anything within thirty days of approval.

Carmichael introduced Case 1184 **Continued Case 1184:** Timothy Halliday, 30 Hughgill Road Rindge, NH 03461 for property located at 442 Middle Winchendon Road and Dale Farm Road (Knights Lane), Map 2 Lot 46 & Map 2 Lot 54, in the Residential Agriculture and Business Light Industry Districts, for a Variance from Article IX Section A of the Zoning Ordinance to permit Residential use in the Business Light Industry Zone.

Marty Kulla summarized the relative ordinance and uses permitted.

Carmichael asked Attorney Ratigan, representing the applicant, to provide an overview for the case. John Ratigan highlighted the line on the plan that ran between the Residential Agriculture District and the Business/Industrial District the proposal is to authorize the applicant to use the new proposed Zone 9.59 lot on the lower right-hand side for an area above it for a new potential residential use there. Carmichael thanked attorney Ratigan and asked for questions from the audience. George Quill and David Drouin asked about the wetlands in that strip. Thomas said it looks like it will be about a 2-acre lot. With a buffer between the wetlands and Business Light District.

Jason Gorman said removing any business light industry from the tax rolls was not good. Tom Coneys commented on the plan, saying that it limits the business light areas. Stenersen said it's an isolated piece of the wetlands. Judy Unger Clark asked if that piece of land was going to remain Business Light Industry, and where the access was going to be for the Res AG. Judy said, so the access road will come off of Res Ag and Tim Halliday said yes. Carmichael asked for additional questions and there were none. Carmichael **motioned** to go into deliberative, **vote:** 5-0-0.

Carmichael said this seems to give the applicant another 2-3 acres to convert to Res Ag. Breckenridge **motioned** to go into deliberative session. Carmichael **seconded** **Vote:** 5-0-0. The Board went into deliberative session and began with responding to the questions.

1. The Variance would/would not be contrary to the public interest because:

Granting the variance would do substantial justice because the gain to the landowner and the loss to the landowner is not outweighed it's a better use of the land because the land, as it is, isn't useable.

Motion: by Thomas **Second:** by Carmichael **Vote:** 5-0-0

2. Granting the variance would/would not do substantial justice.

Granting the variance would do substantial justice because the land is unusable in its current configuration and the loss to the landowner would not be outweighed by a gain of the public.

Motion: by Breckenridge **Second:** by Carmichael **Vote:** 5-0-0

3. The variance would /would not be consistent with the spirit and intent of the Rindge Zoning Ordinance because:

Granting the variance would do substantial justice because it increases the residential agricultural portion, slightly, and enables the owner to use property that was unusable.

Motion: by Carmichael **Second:** by Thomas **Vote:** 5-0-0

4. Granting the variance would /would not diminish surrounding property values because.

Granting the variance would not diminish surrounding property values because there is no data to support loss of property values.

Motion: Thomas **Second:** Breckenridge **Vote:** 5-0-0

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.

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.

Motion: Thomas **Second:** Breckenridge **Vote:** 5-0-0

- a. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provisions to the property because:

There is no reasonable use of the property without a variance.

Motion: Thomas **Second:** Carmichael **Vote:** 5-0-0

b. The proposed variance would be a reasonable one because:

Without the variance the owner has no reasonable use of the property.

Motion: Breckenridge **Second:** Carmichael **Vote:** 5-0-0

The Variance is granted. Carmichael reminded Mr. Halliday that there is a thirty day appeal window and he would be taking a risk if he did anything within thirty days of approval.

Other business that may come before the Board:

Introduction of candidate for ZBA Alternate Terence Fogg. Mr. Fogg introduced himself and expressed his interest in becoming an alternate on the ZBA. Carmichael motioned to vote on the candidate. The Board Voted: 5-0-0 and welcomed Terry as an alternate to the ZBA.

Marcia shared a statement with the board.

Approval of Minutes of 2/22/22, and 03/22/22

Motion: by Carmichael to approve minutes of 2/22/22 and 3/22/22

Second: by Breckenridge

Vote: 5-0-0 minutes of 2/22/22 and 3/22/22 are approved.

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

Meeting adjourned at 9:45pm

Kim McCummings
ZBA Clerk

George Carmichael
ZBA Chairperson