

ZBA Meeting Minutes Tuesday December 22, 2020 (DRAFT)

Meeting called to order at 7:04pm by Chairman George Carmichael. He asked the zoom audience to mute their microphone until called upon to cut down on the background noise. He then read the following statement.

“In accordance with Governor Sununu’s Emergency Order #12 and pursuant to Executive Order 2020-04, this Board is authorized to hear cases electronically.

Please note that there is no physical location to observe and listen to this Hearing, which is authorized pursuant to the Governor’s Emergency Order.

In accordance with the Emergency Order, I am confirming that we have provided public access to the meeting by telephone and online access by video utilizing the Zoom online meeting platform.”

The Chair asked members and alternates to introduce themselves and include their status as members of the ZBA. George Carmichael, Chairperson, Marcia Breckenridge, Vice-Chairperson, Phil Stenersen – member, Bill Thomas – member, Deni Dickler – alternate, Martin Kulla – member, Kim McCummings -ZBA Clerk.

Chairman Carmichael announced that the notices for the hearing were posted on the Town Website, at the Rindge Post Office and Town Offices. He next explained how the hearing would progress, how alternates and the public could participate, that the five members sitting on the case would participate in the final deliberation on the case and how absences and recusals would be addressed. He then asked if there were any recusals and there were none. He also asked that when members of the public address the Board to please identify themselves for the record.

Dickler read the case into the record.

Case #1156: Sally Collins P.O. Box 176, Rindge, NH 03461, for property located at 67 – 69 County Rd, Map 10 Lot 39 in the Residential District for a Rehearing of Decision on ZBA Case # 1151 Tax Map 10 Lot 39 in the Residential District for a Variance from Section 5.B. of the Wetland Conservation District Ordinance to permit existing septic system replacement within 100 ft.

Stenersen summarized Section 5.B. of the Wetland Conservation District Ordinance for the record.

Seated on the case were Breckenridge, Thomas, Kulla, Stenersen and Carmichael.

Carmichael asked Sally to tell the board why she was back. Sally explained that at the previous hearing she learned that the septic installer followed State requirements, but he didn't check the Wetland District requirements for the Town of Rindge, and at the time there was no Code Enforcement Officer. It was after the work was done that I was told about needing the variance. She also said that the reason that she had to replace the septic system was because the previous system was improperly installed and failed.

Carmichael thanked Sally for the update and asked the board if there was enough new information to proceed with a rehearing at this time? Has the applicant provided any new information that was enough new information that was not previously available to the board, yes or no, and asked for a motion? Breckenridge said I move that she has, we didn't have all of the soils information. Carmichael agreed and seconded the motion. Carmichael said the applicant has submitted new information not previously submitted to the Board in the form of letters from Russell Huntley, from Huntley Survey and Design and Don Buker from DES. Carmichael **motioned** that the case be reheard, Breckenridge **seconded**. Thomas referenced information received from Con Com. **Vote:** 5-0-0

Carmichael asked for questions based on the new information received. Thomas suggested following the recommendation from Con Com for a soil scientist to take a look at it, given the property is located near the Lake, and agreed with the recommendation to continue the case until spring. As that would give enough time to evaluate the site. Breckenridge asked why additional information was necessary. Dickler said some of the information was from online references and was not specific to the site.

Stenersen said that Carl Hagstrom was a Soil Scientist, David Drouin, from Con Com said that Dr. Regendapol (sp) and Tom Peragallo were also soil scientists and local. Kirk Stenersen commented that the reason for the setback from the wetlands is to prevent effluent perforating into the ground from being absorbed into the wetland. In the event of a septic failure and that given the perc rate on the property it would be absorbed into the ground before it hit the wetland. Test pits were suggested.

Kulla suggested that knowing where the line for the water flow was would be helpful in determining the existence of any impact on the wetlands. Dickler asked if there was any additional input from Con Com. Richard Mellor suggested Rick Van Vepoll as another soil scientist contact, the use of pour sample vs. test pits and that the installer should bear the cost of septic replacement.

Thomas **motioned** to continue the case until the applicant can contact the soil scientist and come back with more information from the soil scientist and site samples. Carmichael **seconded**. Following a discussion about a set date and time for the continuation of the hearing Chairman Carmichael said the continued hearing would be re-noticed and abutters notified at that time. **Vote:** -5-0-0

Case# 1157: Traven Development, LLC 1448 NH route 119, P.O. Box 283, Rindge, NH 03461, for property located at Knight Road & 442 Middle Winchendon Road, Tax Map 2 Lot 46 and Tax Map 2 Lot 54 in the Business- Light Industry and Residential-Agricultural Districts, for a Variance from Article V Section A, of the Zoning Ordinance to permit a Medical Manufacturing use with associated parking and drives on the Residential-Agricultural District portions of Tax Map 2 Lots 46 and 54.

Carmichael read the notice into the record. Thomas summarized the relevant ordinance.

Sitting on the case were Breckenridge, Thomas, Kulla, Dickler, and Carmichael. Phil Stenersen recused himself.

Kim & Bruce Gavigan abutters across the street at 49 Middle Winchendon Road, spoke to the potential impacts due to traffic, impacts on the neighborhood, property values and the type of use. Chairman Carmichael asked the applicant's representative, Kirk Stenersen, to provide background information. Kirk Stenersen of Higher Design explained the following: The property is located at Knight Lane (formerly Dale Farm Road) coming in from Rt. 202 and Middle Winchendon Road. The two parcels currently are divided between the Residential-Agricultural and Business- Light Industry Zoning Districts and the use, Medical Manufacturing, is not permitted in the Residential-Agricultural Zoning District. The owner would like the entirety of the two lots to be included in the

Business-Light Industry Zoning District as was the intent when the Zoning District was established. The parcels proposed to be purchased are Map 2 Lots 57-1 and 57-2 the two corner parcels, with some frontage on Rte. 202 and Lots 46, approximately 40 acres, and 54 is 6 acres, which are the two lots in question. The proposal is to purchase the four parcels, approximately 49 acres, and use it to construct a Clean High Tech Medical Manufacturing Facility with associated parking and drives.

Kirk provided an overview of the variance request as stated in the application. The request is to provide the uses on the entirety of the two parcels on the Residential-Agricultural District portions of Tax Map 2 Lots 46 and 54 which are currently bisected by the Business Light Industry and Residential Agricultural Zoning District lines.

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

The variance request is to use allow the proposed Medical Manufacturing use on the entirety of the two parcels. That it will not be contrary to the public interest, is a clean high tech operation with no smoke stacks or odors. The proposed use will bring approximately 250 good paying jobs of which approximately 200 will be new hires. It will be located on the interior of the site and designed to have good access in and out of the site. The variance would not be contrary to the public interest and will provide opportunities for good paying jobs for the residents of Rindge.

2. Granting the variance would do substantial justice because:

The original location of the business –light industry zoning district line along U.S. Route 202 in this area was a specified distance of (600 feet) from the U.S. Route 202 right of way line running parallel to U.S. Route 202. In 2006 in preparation for the 2007 Town Meeting the planning board reached out to individual land owners whose properties were bisected by the zoning line to see if they would like to have their parcels entirely in one district or the other and not bisected. The intent was to clean up the zoning district lines and have them follow the existing property lines. At that time the land owner was not sure if he wanted the properties in the business-light industry district or in the residential-agricultural district as he was unsure of his plans for the property

so he requested the properties remain bisected. Now that there is a potential use for the property the prospective developer is requesting the property be all one use over the two properties and there is no gain to the general public by not allowing a single use over the entirety of the properties.

3. The variance would be consistent with the spirit and intent of the Rindge Zoning Ordinance because:

The zoning ordinance states that it is “for the purpose of promoting the health, safety, and welfare of the inhabitants, and preserving the values and charm not attached to the Town”. The proposal to allow these two properties will have no effect on the health, safety and welfare of the inhabitants of the town as the proposed use is a clean high –tech operation. The area along U.S. route 202 was zoned for business-light industry uses and allowing the medical manufacturing use to extend the entirety of the zoning district line, will not affect the values and charm now attached to the Town. The granting of the variance will provide additional places of employment for the residents of the Town.

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

Portions of the properties are already in the business-light industry district and allowing the proposed medical manufacturing use on the entirety of both properties will not diminish surrounding property values. The abutting property to the west (map 2 lot 42-2) is an excavation company stockyard and is in the business-light industry district. The abutting properties to the northwest and across Knight Road, f.k.a. Dale Farm Road, (map 2 lots 43 & 44-1) are vacant properties which are in the business light-industry district. The abutting property to the north across Knight Road (map 2 lot 45) is an approved 27-unit Multi-family Planned Unit Residential Development (PURD) that is in the residential- agriculture district. Multi-family developments make a great transition/buffer between single family homes and commercial/manufacturing uses as proposed. The property to the east (map 2 lot 52-2) is a single-family residence with an in-law apartment in the residential-agricultural district and is also home to Precision Lawn and Landscape. The property to the east of lot 54 (map 2 lot 52-3) is an

approximately 6-acre parcel in the residential-agricultural district with a single family residence on the far side of the property away from the subject parcel. The abutter to the south of lot 54 across Middle Winchendon Road (map 2 lot 55) is a single-family residence in the residential-agricultural district which already abuts the business-light industry district and are what was the Monadnock Full Gospel Church and parsonage for the church. The church has since been sold and is being used for a logging processing yard. The abutter to the west across U.S. Route 22 (map 2 lot 41-7A) is an excavation stockyard in the business light-industry district. The majority of the surrounding properties are currently in the business light-industry district or already abut the business light-industry. Abutting property values will not be diminished due to allowing the entirety of the properties to be used for medical manufacturing.

5. Special conditions do exist on the property that diminish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship:

The two properties are bisected by the business light-industry residential-agricultural district line which in and of itself is a unique feature. The properties, with easy access to U.S. Route 202 from Knight Road or Middle Winchendon Road, are a great location for a large clean high-tech medical manufacturing business. The properties, in addition to map 2 lots 57-1 and 57-2 which would become part of the development, total approximately 49 acres. The proposed use requires approximately 40 acres and the additional 9 acres for additional landscaping and buffering. There are limited parcels of this size with easy access to route 202 and the fact that the intent in 2006 was to eliminate any properties that were bisected by the zoning district line indeed makes the properties unique. Literal enforcement of the ordinance does not allow the properties to be developed with a reasonable and clean high tech use which requires large land area.

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

The subject properties are bisected by the business-light industry/residential-agricultural zoning district line. The business-light industry district allows for manufacturing and no fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision and the specific application of the restriction on utilizing the entirety of the properties for a medical manufacturing use as the intention was for businesses to be allowed along the U.S. Route 202 corridor and for parcels to not be bisected by the zoning district line.

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

The parcel is bisected by the business-light industry/residential-agriculture zoning district line and it is reasonable to allow a clean high-tech medical manufacturing use, which will offer very good paying jobs to the residents of the Town, over the entirety of the two properties.

Carmichael asked if there were any specifics about the plan for the lot, or about the project that could be shared. Kirk deferred to the applicant. Matt said “some of the details are part of the negotiations and I can’t share, or name or specifics.” Like a Millipore there will be many good paying jobs and the materials would be made in clean-rooms.

Breckenridge said the potential for 250 jobs raises the question for increased traffic, and the potential for expanding. Carmichael clarified the potential entry point of off of Rt. 202. Kirk offered potential access entry points and referenced parking for 300 cars.

Deni asked about the December Planning Board meeting where there was a warrant article on the same thing. Kirk said the landowner chose to pursue both options at the same time and a proposed warrant article would be discussed at the January Planning Board meeting.

Judy Unger-Clark expressed concerns about the December 1st and December 15th Planning Board meetings when the article was proposed to be included on the Warrant and asked if the ZBA was aware of it. Carmichael said the application is

for a Variance and that was what the ZBA. She said if it goes to the warrant the whole Town can have input. Carmichael asked Kirk for clarification, Kirk said the proposed article had not yet been moved to the warrant, it has been moved to Public Hearing to consider if it will be moved to the Warrant, and those decisions would take place at the January 5th, Planning Board meeting. David Druin asked for clarification of the abutting lots, and Kirk located them on the zoning map.

Carmichael asked if there were any additional comments, George Quill, abutter, clarified his proximity to the proposed project and voiced concerns about potential wetland issues, the impact on property values, and a "Clean Manufacturing Facility" being built next to his house, doesn't understand how it's in the Town's interest for the "factory" to be built here, and concerns about storm runoff from the parking lot.

Breckenridge asked about the number of employees and shifts and parking spaces. Kirk deferred to Matt who said the number quoted to him was 250 employees total, no information on the shifts.

Deni asked about type of materials being delivered, the size of trucks coming in, number of trucks, type of materials. Matt said he didn't have the numbers, Deni asked about hazardous substances being delivered. Breckenridge asked what does "clean" mean. Carmichael agreed that more detail is needed to continue with a decision Matt said he was told it was clean-manufacturing, clean-rooms, and the number of employees.

Amy Holumbo voiced concerns like those raised by George Quill in addition to access to the proposed site from Rt. 202.

Judy Unger-Clark asked what aquifer provided water to the site. Kirk said it was not in the Aquifer Protection District.

Breckenridge asked if there was any idea of projected deliveries. Carmichael agreed that there wasn't enough specific information, and it would be hard for the ZBA to make a decision based on the lack of it. She also asked about the volume of trucks to determine possible damage to the roads. Thomas reminded the Board that unlike Home Depot this is not a retail outlet and there is not a direct comparison regarding traffic volume. Kirk said the difference with Home Depot is it was specific to an impact to wetlands, where this is a variance to the

use of the property. Breckenridge added that one of the things that has to be considered is possible impacts to property values. George Quill raised the issue of damage to roads during winter/spring when the road weight limits are set. David Drouin suggested continuing parking, where a building might be located on the site, currently there isn't enough information to make a decision. Kim Gavigan referred to comments about the decision that was made in 2006, once the variance is set it can't be taken back, yes it may be good for jobs, and the Tax Base, but the potential expense of Police and Fire to the Town also have to be considered. Bruce Gavigan said Middle Winchendon Road cannot handle that volume of traffic. Would appreciate the Board possibly doing a site visit to see it for themselves.

Kulla said the ZBA is different from the Planning Board and some of these items would be addressed by them and if more information was available it would be easier to make a decision. Kirk said the entrance would likely be through Lots 56-1 and 57-2 closer to the intersection. The client is looking for 40 acres of usable land, having the 49 makes it more feasible and work with buffer.

Judy Unger-Clark said there would be issues with Knight Lane because it's a class six road and has issues with access. George Quill added that comparing this project to Teleflex doesn't make sense because we don't know anything about this project.

Marcia said we don't have enough information to make a decision, Definition of clean material etc.

Tim Halliday said that Knight Road can't be taken off the table because it's in the Light industry district. Dale farm is class 5, Class 6 Knight Lane starts just before where the road is blocked off and is maintained by the developer of Lot 45 by agreement with Town.

Judy Under-Clark suggested a question about water usage in the site be included.

The board determined they would like the applicant to prepare answers to the following questions for the January continuation of the hearing:

1. What is going to be transported?

2. The approximate water usage
3. The approximate building layout
4. The approximate parking layout
5. How many shifts per day?
6. A rough definition of the business and what makes it “clean.”
7. Access to the property

Carmichael confirmed with Kirk and that the applicant could have the information ready for the January meeting.

Motion: Breckenridge motioned to continue the hearing until the seven issues can be addressed at the January 26th meeting, **Second:** Bill Thomas. **Vote:** 5-0-0

Case# 1158: Robert & Roberta Chamberlain, 35 East Main St, Rindge, NH 03461 for property located at 35 East Main Street, Tax Map 26 Lot 8 in the Village Zoning District, for a Special Exception as specified in the Accessory Dwelling Unit Ordinance and Article XV Section B of the Zoning Ordinance to allow an Ancillary Unit/In Law Apartment.

Marty Kulla read the case into the record. Deni Dickler summarized the relevant Ordinance into the record.

Sitting on the case were Breckenridge, Thomas, Kulla, Stenersen, and Carmichael.

Carmichael asked the applicant, Robert Chamberlain to explain what he’s trying to do. Mr. Chamberlain said he’s here because he’s trying to get an approval for something he did, but didn’t know required a permit for. He said he took out a rec room and added two walls and a kitchen upstairs to for his granddaughter and her kids to live in. He said from the pictures you can see its all part of my house and from the outside you can’t tell it was done.

Thomas asked for the location of the stairs and the other access to the ADU. Mr. Chamberlain described where on the plans they were, the location of the stairs from the downstairs to the upstairs and a door at the back of the upstairs unit

that will have a deck and stairs leading to the ground. He said the house has been that way for about 20 years.

Dickler asked about the septic system. Mr. Chamberlain stated it had been replaced years ago when there were more people living there, maybe 12 or 16 people, and now it's just him and his wife and the grand daughter and three grand kids in the ADU. The board discussed how to satisfy the requirement for a septic plan on file. Carmichael suggested a condition to have the septic system be checked to ensure it is working properly which would meet the requirements. There are three adults and three people in the ADU Unit upstairs. Deni asked for the square footage, which the board estimated to be approximately 660 to 700 ft. based on the drawings.

Carmichael asked if there any other questions. Thomas moved to go to deliberation, Carmichael seconded. Vote 5-0-0. The Board entered deliberation and discussed the issue with the septic system and decided on the earlier suggestion from Stenersen to require verification that the existing septic system is working properly. **Motion:** Carmichael motioned to approve the special exception with a condition that the owner verifies that the existing septic system is verified as working properly. **Second:** by Stenersen, **Vote:** 5-0-0. The special Exception is granted.

Approval of Minutes: December 22, 2020

Other business that may come before the board.

Respectfully Submitted

Kim McCummings

ZBA Clerk