



RINDGE BOARD OF ADJUSTMENT
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June 28, 2022 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; Terrence Fog, alternate, Bill Thomas, member; George Carmichael, Chair; Marcia Breckenridge, Vice-Chair; Marty Kulla, member; Ross Thermos, alternate

Members absent: None

Others present: Bruce and Kim Gavigan, Dawn Dunbar, Sally Dunbar, Sidney L. Thayer, Mary Pellerin, David Drouin, Kelen Geiger, Trent Muhonen, Michael P. Bentley

Chairman 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 and there were none.

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. He also added that the Request for Rehearing of Case 1182, would be a discussion for Board Members only and there would be no public input.

Chairman Carmichael opened the hearing for Case 1187. Sitting on the case was Breckenridge, Stenersen, Thomas, Carmichael and Kulla.

Ross Thermos read the case in to record. Case 1187, Trent & Tessa Mahoney, 22 Diane's Way, Rindge, NH 03461 for property located at Converseville Road, Map 7 Lot 96-1, in the Residential Agriculture District, for a Special Exception as specified in the Accessory Dwelling Unit Ordinance. Bill Thomas summarized the relevant information from the ADU Ordinance.

Carmichael welcomed Trent Muhonen and asked for information on the request for the ADU.

Muhonen explained that he is currently building a home, 2400sqft. His plan is for the home to be his "forever home" and the ADU would be for his parents. The planned ADU is 707sqft and will include egress from the lower level by egress windows. Thomas asked for the location of the second means of egress and Muhonen said that there were two egress windows on the lower level and located them on the plan. Carmichael asked if the house was already there. Muhonen responded that the foundation had just been poured. Carmichael confirmed that he had a building permit, commented that the setbacks were all set and that there didn't seem to be a problem with wetlands.

Stenersen said that he checked the plans for the required permits, and they were there. The Board reviewed the plans that were provided and there were no further questions from the Board. Stenersen said he checked the plan and the septic was confirmed to be adequate for the residence and the ADU. Carmichael asked for questions from the audience, there were none. **Motion** by Breckenridge to move to deliberative session, **Second** by Thomas, **Vote:** 5-0-0.

Carmichael said it appeared the applicant addressed all issues in the application. Breckenridge added that the application addressed the four criteria. He addressed the

traffic, property values, septic, and water issues, and preserving the attractiveness of the Town. Carmichael said it the application looked straight forward, and the applicant did a good job.

Application responses:

Criteria 1: The use will not create excessive traffic, congestion, noise or odors.
It's a new single-family dwelling with an ADU.

Criteria 2: The use will not reduce the value of surrounding properties.
It's a new home with ADU above garage. No change to overall appearance.

Criteria 3: There are adequate sewage and water facilities, and sufficient off-street parking is provided by the applicant.
The septic is for a 3-bedroom house with a 1-bedroom ADU. No street parking is required.

Criteria 4: The proposed use will preserve the attractiveness of the Town.
The ADU will be in space above the garage with no change to appearance of the home.

Motion: by Thomas to approve the application as written by the applicant in the application. **Second** by Breckenridge, **Vote:** 5-0-0

Carmichael opened the hearing for **Case: 1190**. Sitting on the case was Breckenridge, Stenersen, Thomas, Carmichael and Kulla.

Terrene Fogg read the case before the Board into the record. **Case 1190:** Sydney L. Thayer, 144 Kimball, Road, Rindge, NH 03461, for property located at 144 Kimball Road, Map 39 Lot 17, in the Residential District, for a Variance from Article III, Section G.4 of General Provisions and Section 5A of the Wetlands Conservation District Ordinance to permit construction of a 10ft by 34ft deck on the northern side of the applicants' home which will connect to the home's existing deck. The corner of the new deck will be located approximately 21ft from the ordinary high water mark line of Pearly Lake.

Breckenridge summarized Article 3 Section G-4 of the General Provisions and Section 5A of the Wetland Conservation District Ordinance into the record.

Carmichael opened the testimony phase of the case and asked for the applicant to introduce himself and provide background information. Sydney L. Thayer 140 Kimball Road introduced himself and said he was a 100% disabled Veteran and needs to extend the current deck to be able to access the outdoor portion of his home with a walker or wheelchair. He added that the deck is 5ft in the air and wrapping around behind the house he thinks there may have been a porch, but there isn't another door to use. So I will need deck going around 5 ft and wrapping around. Behind the elevation between the deck and the ground is about five ft but due to the VA requirements of 1 inch per ft. the ramp will be longer.

Thomas said the whole house is within the 50ft setback. Carmichael asked about the measurement on the plan. Ms. Pellerin said it was the pin for the property line.

Carmichael asked David Drouin if the Conservation Commission had any questions. Drouin said they visited the property, met with the property owner and recommend the following as conditions of approval:

1. That the deck have an impervious surface of deck boards with an air gap between the boards.
2. The ground area under the deck be crushed stone.
3. The runoff of the residence roof be guttered away from the shoreline as much as possible.
4. The deck never be enclosed with an impervious roof in the future.

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

Motion: to enter Deliberative session by Thomas, Second: by Carmichael **Vote:** 5-0-0

Motion: by Thomas to approve the variance application as written with the addition of the four Conditions as stated in the document submitted by the Conservation Commission as part of the decision.

Application responses:

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

The proposed deck will not conflict with the purpose of the ordinances. The characteristics of the residential neighborhood will not be altered. Several homes in the neighborhood have similar decking. The proposed deck will not interfere with the rights of the public, nor will the deck affect the public health, safety or general welfare of the public.

2. Granting the variance would do substantial justice because:

The granting of the variance would do substantial justice for the homeowner, a disabled veteran. The decking would allow the homeowner to spend more time outdoors on the deck with the occasional use of a walker or wheelchair. There will be no gain to the public if the variance is denied. Neither the general public nor any individual will be harmed by the granting of the variance. It would be an injustice to the homeowner if the variance was not granted.

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

The proposed deck does not conflict with the spirit or purpose of the ordinance. Many of the homes in the neighborhood have decks. Neither the character of the Town nor the neighborhood will be altered. There will be no threat to the health safety or welfare of the public. The spirit of the ordinance will be observed.

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

The proposed deck will not diminish the values of the surrounding properties. The deck will improve the look of the exterior of the home which shall be a benefit to the surrounding properties in the neighborhood. See letter attached from Rebecca Lehtonen, a real estate agent with ReMax Town Square, New Ipswich, New Hampshire.

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.

The premises is located on Pearly Lake. It is reasonable to construct a deck on a home. The homeowners' request to build a deck is not unusual. Other homes in the area, which are not located directly on Pearly Lake, do not need a variance to construct a deck. The literal enforcement of the ordinance would result in an unnecessary hardship to the homeowner.

5a. 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:

Applying the zoning restriction to this particular property would not be fair or just to the homeowner. It would not be a benefit to the Town to deny the variance by enforcing the restriction. It would be an injustice to the homeowner.

5b. The proposed variance would be a reasonable one because:

The location of the current home is unique as it is on Pearly Lake. It would not be in the spirit of the ordinance to deny the homeowner the variance for the deck. Having a deck on the home is a reasonable use of the premises. The property cannot be reasonably used in strict conformance with the ordinance due to its location. A variance is necessary to accommodate the owner's reasonable use of the property.

Conservation Commission Recommendations:

1. That the deck have an impervious surface of deck boards with an air gap between the boards.
2. The ground area under the deck be crushed stone.
3. The runoff of the residence roof be guttered away from the shoreline as much as possible.
4. The deck never be enclosed with an impervious roof in the future.

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

The Variance is approved. Carmichael informed Mr. Thayer that there were 30 days in which an abutter could appeal the decision.

Other business: Carmichael introduced the discussion regarding the Application for Re-hearing of ZBA Case 1182 and read the following: The Board will consider a re-hearing application from Bruce P. Gavigan and Kim L. Gavial regarding ZBA Case 1182, for property located at 442 Middle Winchendon Road, Map 2, Lot 46 & Map 2 Lot 54. He explained that the Board would have a discussion on the application, the decision would be made at this meeting and a written decision would be recorded and sent to the applicant. Carmichael also stated that he had consulted with NH Municipal, and they were very clear that this is a meeting, and the Board would not be taking testimony from the audience.

Kim Gavigan asked if the decision would be made tonight? Carmichael said yes, and that she would hear the decision and receive a written decision in 10 days.

Sitting on the discussion were Carmichael, Thomas, Breckenridge, Kulla and Thermos who also sat on the original case, Stenersen recused himself from the discussion.

Carmichael announced that there were three areas to address on the decision tree and they would be taken in order. The three areas are 1. Is the application for rehearing complete, 2 Has the applicant supplied any information that was not previously available to the Board? and 3. Did the Board of Adjustment make any procedural or structural (legal) error in rendering the previous decision? All of the questions require a Yes or NO response.

Carmichael presented the first question.

Question #1. Is the application for rehearing complete? Yes or No because:

Carmichael said the application did come in on time. Carmichael added that there was a question from Attorney Ratigan about the difference in date stamp versus the receipt stamp and asked Zoning Clerk McCummings to clarify. McCummings said that she is not always in the office when applications come in. The application came into the office on 5/25/22 and I started the tracking of the information on the next day that I was in the office, 5/26/22. Carmichael asked if the application is complete. The board agreed that the application was complete. **Vote: 5-0-0 Yes**

Question #2. Has the applicant supplied any new information that was not previously available to the Board? Yes or No because.

Carmichael referenced the two letters, one from the applicant and the other from attorney asked if there was any new information that suggest that we did something wrong he went back to the Bentley letter. Thermos said he didn't see anything new. Carmichael said there were a lot of statements or comments, but not new. Kulla said he didn't see any new information but could have missed something.

Breckenridge referenced #3 "while the application of the applicant addressed each of the five criteria, the minutes of the meeting reflect that not a single criterion was addressed during the public hearing portion of the meeting." The procedure/practice has always been that the chair announces who is sitting on the case, who reads the specifics and who reads the specifics that the documentation that the voters put in that we follow. The applicant addresses each of the items on the application etc. To say that not a single issue was addressed during the public hearing is contrary to our practice and erroneous. Thomas said there was quite a lot of discussion. Problems were also cited with items 8, 12, 13, 14 15, and 20 all basically statements or opinions. Nothing that the Board could respond to.

Carmichael asked for anything else to add before we take a vote? Nothing was offered. Carmichael asked has the applicant supplied any new information that was not previously available to the Board? **Vote:** No 5-0-0

#3 Did the Board of Adjustment make any procedural or structural (legal) errors in rendering the decision? Vote: No 5-0-0

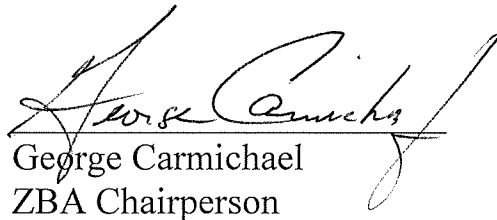
Motion: by Carmichael. The Board of Adjustment DENIES the Application for Rehearing of Case 1182 because the applicant did not supply any new information, established procedures were followed, and there were no structural errors in the rendering of the original decision. Second by Thomas **Vote:** Yes 5-0-0

Approval of Minutes: Motion: by Stenersen to approve the minutes of April 26, 2022 as written. **Second:** by Carmichael **Vote:** 5-0-0 the minutes are approved

Motion: To adjourn by Carmichael **Second:** by Breckenridge **Vote:** 6-0-0

Meeting adjourned at 7:30 pm

Kim McCummings
ZBA Clerk


George Carmichael
ZBA Chairperson

