

May 25, 2021 ZBA Minutes

Chairman George Carmichael called the meeting to order at 7:02pm and announced that the Zoning Board was holding a hybrid meeting in person at the Rindge Recreation Building, 283 Wellington Road, Rindge, NH and on ZOOM to accommodate all residents. Members and alternates were asked to introduce themselves and state their status on the Board. Members present included: George Carmichael - Chair, Bill Thomas – Member, Marcia Breckenridge – Vice-Chair, Deni Dickler- Member, Marty Kulla – alternate, Phil Stenersen - Member

Carmichael provided the following general information about the Board: 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 phase is closed, only the 5 voting members will participate in the deliberation and decision. When a regular member is either absent or recuses, the Chairman will appoint one of the alternates to sit on the case. Carmichael then asked if there would be any recusals for the meeting and there were none.

The Clerk announced that the Notice of Public Hearing was posted in the Ledger/Transcript, Town of Rindge Website, the Rindge Post Office, the Rindge Town Office, and the Ingalls Library.

Carmichael explained for the audience how the Meeting would proceed, how to be recognized to speak during the portions of the hearings that are open to public comment, asked that when addressing the Board to identify themselves using their name, abutter status and address for the clerk.

Carmichael opened the hearing for Case 1151, announced that Breckenridge, Stenersen, Thomas, Dickler and Carmichael would be seated for the case and asked Stenersen to read the case before the Board into the record. Stenersen read the following into the record: Case# 1151: continued - Sally Collins, 67 County Road, Rindge, NH 03461, for property located at 67-69 County Road, Tax Map 10 Lot 39 in the Residential District for a Variance from Article V Section B of the Wetland Conservation Ordinance to permit existing septic system replacement within 100ft.

Carmichael asked Thomas to summarize will summarize the relative ordinances and he read Article V Section B of the Wetland Conservation Ordinance into the record.

Carmichael opened the hearing to testimony and asked applicant, Sally Collins, to update the Board on what has happened since October 2020. Collins brief overview of the initial septic failure, the replacement with a new system that, unfortunately, wound up being closer to the wetlands. Collins also said that, as suggested, she had hired a soil scientist and a wetlands scientist, and both had visited the property, assessed the impact of the new septic installation, and provided written reports which the ZBA reviewed.

Dickler asked if when the state approved the system some of the system which is on excessively drained soil and asked if anything special was requested to address concerns for the well and potential groundwater contamination. There was agreement that the issue was the improper installation of the septic system. Stenersen said that the state determines guidelines for the design and installation of septic systems and that is when the issues are addressed.

Carmichael asked for other comments and David Drouin, Conservation Commission Chair stated that made a visit to the site and submitted a letter to the ZBA outlining the actions taken by the applicant and thanking her for her efforts in addressing the issue on the property. Drouin suggested that a condition of approval be included with the decision to address future septic systems being installed where the original system was located and that this case not be used as a model for future cases.

Motion: to move to deliberative session by Thomas, **Second:** by Breckenridge, **Vote:** 5- 0-0

The board moved into deliberative session. Carmichael said he agreed with Con Com's comments and that the applicant was stuck with a system that was not properly installed, has been left with the financial responsibility of correcting it and there is no other location on the property to locate it. Breckenridge agreed with Carmichael's comment.

Thomas suggested a condition be added to the decision due to the uniqueness of the situation. Breckenridge agreed and said the situation was unique to the property and should not set a precedent for other cases. Carmichael also suggested the letter from Con Com be included with the decision.

Dickler suggested the requirement of annual pumping of the septic tank. Stenersen explained how frequently a system should be pumped and that annually may be excessive. After additional comments, it was determined that the condition would not be included.

Carmichael suggested to approve variance as submitted, then add conditions. “That for this specific existing system and any future septic system conform to the town regulations”. Breckenridge suggested including language that said “granted for this specific unique system, not as a precedent setting system. See attached Conservation Commission letter dated May 21, 2021. Kulla suggested just saying “this installation” instead of a “specific unique”. After further discussion Carmichael made the following **Motion:** The application be accepted as written with the following condition, that the variance is granted for this specific unique system, not as a precedent setting system. See attached Conservation Commission letter dated May 21, 2021. **Second:** by Thomas **Vote:** 5-0-0 The variance is approved.

Collins asked if the laws are different 15 years from now and the new owner must change the system then they will have to go by the new rules, or these? Carmichael confirmed that the rules that are in place at the time of the new application would be the ones the applicant would have to follow. Collins thanked the Board and Carmichael thanked Collins for her patience in working with the Board throughout this case.

Carmichael opened the continued hearing for Case 1165 and announced that sitting on this case would be Breckenridge, Stenersen, Thomas, Dickler and Carmichael.

Carmichael announced that Kulla would read the case before the Board into the record. Kulla read the following into the record: Case# 1165 cont'd: Navian Development, 581 NH Route 119, Rindge, NH 03461, for property located at 581 NH Route 119, Map 4 Lot 23 in the Residential Agriculture District, for a Special Exception, as specified in the Wetlands Conservation

District Ordinance, section 6, to allow crossing of wetlands with a roadway associated with the proposed residential subdivision.

Breckenridge summarized Section 6 of the Wetlands Conservation District Ordinance for the record. “The Town realizes that, in certain cases, access to property is impossible or impractical without crossing a wetland or Surface Waters. In those cases, the Town is willing to allow the dredging and filling of a limited area solely for the purpose of such access as set forth in this ordinance...Section 6 shall not be construed as to allow the dredging and filling of wetlands or Surface Waters for the purpose of constructing buildings, other structures, or parking areas or for any purpose other than access, unless a variance is granted by the ZBA. To this end, therefore, dredging, filling, draining or otherwise altering the surface configuration of Surface Waters, or Vegetated Wetlands shall be permitted only for access as described ...”

Carmichael reminded that board that this is a Special Exception and must be approved if all criteria are met.

A point of order was raised by David Drouin, Chairman Carmichael recognized Mr. Drouin, who said he wished to raise a point of order regarding a sitting member to recuse himself from this case. Mr. Drouin continued and stated that he was doing this with great caution and did not want to imply anything negative. He thought Mr. Stenersen should recuse himself from this case as he has a family member who has Navian as a client. Part of the argument that Fieldstone, who is the Engineer for Navian, references nine cases that are supposed to be similar in design, five of which were drawn by his family member and one of them was for Navian. And I think it's inappropriate. Tonight, you will be talking about an interpretation of the ordinance that the Conservation Commission does not agree with, that has come from that family member in his position as Planning Director for the Town. It is a difficult situation; this is a small Town and we're all wearing different hats.

Stenersen, said his son has done work for Navian and as Planning Director works with a lot of people in this town. It is not his case and Stenersen said he had no problem sitting on the case. Carmichael and Breckenridge said that it was his decision if he wanted to step down. Stenersen said that he had no problem sitting on this case and would not be stepping down.

Carmichael opened the testimony phase and asked who would be speaking for Navian. Chris Guida, Certified Wetlands Soils Scientist and Wetlands Scientist with Fieldstone Land Consultants represented Navian and introduced Project Engineer, Nate Chamberlain, and Attorney Ratigan. Mr. Guida gave a brief description of the proposed project, it's a Residential Subdivision, with multi-unit and single-family homes. Several site walks have been done on the property, and there are a fair amount of wetlands on the property. We tried to follow existing roadways created by previous timber clearing and skidders. There are several wetland areas and we have tried to minimize or mitigate crossings. It's a 100-acre parcel and there are 5 impact locations along the roadway. At location #1 we propose a 48 inch culvert, its oversized and partially imbedded, there is not a lot of flow, but seasonally it's wet, longer than the other ones. Throughout the drainage study 30 inches is required for management of storm flow by the State and Town, we've upsized to 48-inches, as there may be some aquatics amphibians, salamanders that may want to pass through there. Location #2 is a smaller crossing, a forested wetland, proposed to have a 24-inch culvert, it's oversized, and we want to maintain continuity between both sides. There's not a lot of flow or direction through the wetlands because they're forested. Crossing #3 is another small crossing, with an 18" culvert, we tried to avoid all the wetland areas.

On a larger parcel like this there's a large section of dry land which needs to be accessed. Crossing #4, the largest crossing, has forested wetlands on both sides, but there's a slope differential, more of a riverine section, a small section of a brook. We're proposing a box culvert imbedded here for a natural stream substrate so amphibians, frogs, can travel unimpeded. The hydrology is staying the same. Location #5 is a couple of small sections. We tried to follow the wetlands staying away from the high ridges and saddles, this is one of the saddles where the roadways go along a higher ridge and the wetlands are on either side. There is a small section on each side that will be impacted by the width of the road. Once out into this dry land section there are two cul-de-sacs to maintain the roadway. It's in a dry area so no need to cross another wetland.

Carmichael asked about the three separate islands and said it looks like it goes through wetlands, is there a culvert there? Guida responded that there's a saddle with no wetlands. There are 5 crossings in total, four are impact areas.

Guida reviewed the five special exception criteria for the Board.

1. The use will not create excessive traffic, congestion, noise, or odors. In this area we're accessing onto Rte. 119, the State Highway. It's in a remote section of Town. It's not densely populated and most of the development is toward the end of the cul-de-sac. Noise will not be an issue. No congestion, with the State Highway will not have any bottlenecks.

2. The proposed use will not reduce the value of surrounding properties.

As far as the proposed development goes, right now especially, there is a very high demand for housing, it's a hot market. Property, and values typically will increase throughout the Town. With new residents there will be an increase to the Tax base. Typically, when we see new development there are no negative impacts, there will be an open space that surrounds the development, and a large buffer. As far as reduction of housing values, I don't see that happening with this situation.

3. There will be adequate sewage and water facilities, and significant off-street parking is provided by the applicant

These will all be onsite septic and onsite wells. Septic designs are roughed in to make sure that they work they will have to go through State approval have adequate septic systems and onsite wells. We'll have to go through the State for Septic approvals. Parking there is adequate. There is a large parking area, single family homes will have parking in front of their homes or in their garages, and multi units will have parking areas also.

4. The proposed use will preserve the attractiveness of the town.

This is a proposed residential subdivision providing new housing stock and is of value to the town. It creates a high value for the town.

5. A special Exception for dredging, filling, draining or otherwise altering the surface configuration of surface waters, wetlands or land within the Wetland Conservation District must meet the four Special Exception Criteria and:

- a. Prove that the proposed use will not conflict with the purpose and intent of the Wetland Conservation District Ordinance.
- b. The applicant must have obtained all other applicable permits.
- c. The Rindge Conservation Commission must produce an advisory opinion on the application.

- A. We did a lot of work before there was a proposed development, there were a number of preliminary designs, and we came up with this one that minimized the number impacts on wetlands. Several concessions were made to reach this point. We met with the Conservation Commission regarding crossings. Their letter indicates they were more than adequate, suitable and meet all crossing standards for the State Wetlands Bureau and Roadway Standards.
- B. Has been reviewed by the Planning Board, we've been through the Planning Board and have their approval.
- C. Rindge Conservation Commission did issue a letter with some opinions.

Carmichael thanked Guida for the presentation, said it answered a lot of questions and commented that it looked like they are maximizing the use of the space.

Carmichael asked for questions from the Board. Dickler asked about crossings at forested wetlands and the impact on the tree cover that would have to be cut. Guida showed the areas and explained the extent and location of the cutting. Dickler asked about blasting that might be required on the site. Guida explained that it's required for shallow ledge and it's an option after others are considered. If used it would be localized. Stenersen asked about the number of proposed units vs. acres of land. Guida said 57 units and 110 acres. Carmichael asked for additional questions. Dickler asked to what extent work would be done to the crossings that would impact the conservation land. Guida said it could be modified if necessary. If there is any it's extremely low, 99% is in the roadway space, and a lot are temporary during construction. Minimal to none in conservation land. Carmichael asked for additional questions from the board, there were none.

Carmichael asked for questions from the audience David Drouin, Conservation Commission, asked about work that would have to be done in the forested buffer. Drouin asked to see page 22 of 40 of the plans which is not included in crossing #4 as being shown. Drouin raised issues about work

being done in adjacent buffers. Guida explained the work is allowed in Section 7 of the Wetland Ordinance and direction based on guidance from the Planning Board and other members. Drouin stated that he appreciated the information, and that the ordinance is very clear on what “must be maintained and shall be maintained in the buffer.”

Richard Mellor raised questions about the buffer and the possible need for a variance to do the work in the buffer, which they currently have not yet done, and the necessity to file the application before beginning the work.

Carmichael referenced the criteria for the Special Exception.

Kulla said, that what we were advised that the focus is the four criteria for the Special Exception.

Kulla said we should address the issue in the Special Exception that is before the Board. Section 6, uses permitted by Special Exception.

Breckenridge suggested the Board move to deliberative session. Dickler asked if the Board should do a site visit before deciding. Carmichael asked for thoughts on Dickler’s suggestion. Breckenridge said we should go to deliberative session. Dickler asked Chris where the drainage was going to. Chris said it is to be retained within 50 feet of the buffer. The requirement at the crossings was to divert away from the wetlands then into the treatment areas. Carmichael asked if they didn’t do that the State would catch it and the Planning Board would catch it also. It has to be diverted at least 50 ft distant from a vegetative wetland. Stenersen said the swale is containing the water, and it is proposed to be diverting the water away from the wetland.

Stenersen said if you look at the actual curbing it is diverting the water over the wetlands. Dickler said if it was diverting away from the wetlands, it would be going east, where there are no wetlands and this is not. Carmichael said yes, it does go downhill.

Carmichael said the Board was looking at a special exception and need to get back on track. It seems that the drainage appears to be going away from the wetlands.

Carmichael asked for additional questions. Dickler said the requirement for the crossing is in G, and it says how it can be done for the Special Exception. Any drainage from the crossing drains not away from the

wetland but into the 50-foot wetland buffer. So, I don't see how we can approve it because for the Special Exception all requirements need to be met. In addition, the swale is being placed within the 50-foot wetland buffer.

Breckenridge suggested going into deliberative session.

Carmichael announced that the board was entering deliberative session.

Motion: To enter deliberative session made by Carmichael, **second** by Breckenridge **vote:** 5-0-0's

The board entered deliberative session for the five voting members and they decided to review each item separately.

Carmichael read criteria one into the record:

1. The Board finds that the use will not create excessive traffic congestion, noise, or odors.

Carmichael suggested the following motion: "The Board finds that the applicant provided evidence that the use will not create excessive traffic congestion, noise, or odors because the applicant provided evidence that the proposed crossings are in a remote section of Town." Dickler suggested the addition of "the five wetland crossings" to the statement. **Revised motion:** The Board finds that the use will not create excessive traffic congestion, noise, or odors and the applicant provided evidence that these five wetland crossings are in a remote section of Town.

Motion seconded by Breckenridge. **Vote:** 5-0-0

2. The proposed use will not reduce the value of surrounding properties.

On these issues, the applicant provided evidence that the new construction would drive property values up in a remote area of town. The applicant provided evidence that in and of themselves the five wetland crossings do not impact the property values. **Motion:** by Dickler, second by Carmichael. **Vote:** 5-0-0

3. There is/is not adequate sewage and water facilities, and sufficient off-street parking is provided by the applicant.

On this issue, the Board determined that this item is not relevant to the decision. **Motion:** by Dickler, Second by Carmichael. **Vote:** 5-0-0

4. The proposed use will/will not preserve the attractiveness of the Town.

On these issues, the applicant provided evidence that the five crossings will have no impact on the attractiveness of the Town because they are in a remote area. **Motion:** by Breckenridge, second by Carmichael. **Vote:** 5-0-0

Stenersen asked Carmichael if it was ok to ask the Engineer, Mr. Chamberlain if the discharge point on crossing #4 is at least 50 feet away. Carmichael asked the question of Mr. Chamberlain and he said “the discharge point is less than 50 feet away”. He added that “it is discharging away from the wet and down the slope to the curb and on to the swale treatment”. The Curbing pulls it 50ft away. Drouin raised a Point of order and said that if you open to outside testimony the Hearing should be reopened. Drouin suggested going to section one to respond to the question.

Dickler said I don’t feel we are meeting the intent and purpose of the Ordinance. Stenersen said that’s why you have water swales. Breckenridge said she agreed about the swales. Breckenridge asked if this question does not pass does that mean the decision goes down. Carmichael said yes. Thomas said the question is between “must” and “shall”. The Issue is that they are within the 50ft. setback. Dickler said if we need to consult with the attorney can we do that? Carmichael said yes.

Motion: by Carmichael to continue the deliberation on the Navian Case to Wednesday, June 2nd at 7pm. **Second:** by Breckenridge.

The Board took a 10-minute break.

Chair opened the hearing for Case 1166

Sitting on this case is Marcia Breckenridge, Phil Stenersen, Bill Thomas, Deni Dickler and George Carmichael

Chair announces Deni Dickler will read the case before the Board.

Dickler reads: Case# 1166: Robert and Roberta Chamberlain, 35 East Main Street, Rindge, NH 03461, for property located at 35 East Main Street, Tax Map 26 Lot 8, in the Village District, for a Variance from Sections 5 B, C and G of the Wetlands Conservation District Ordinance to permit the replacement of an outdated septic system with a new upgraded system on the same location. Bill Thomas summarized the relative ordinances.

Carmichael asked Mr. Chamberlain to tell the board why he was before the ZBA. Mr. Chamberlain said that he just had his old septic system upgraded. A condition of the Special Exception was approved was to have the system checked and he found that it wasn't working properly and has to have the system replaced. Mr. Hagstrom inspected the system and drafted the plans for the new one. Carmichael asked if it was a 3- bedroom system or a 4 bedroom and Mr. Hagsrtom and Mr. Chamberlain said the system has been upsized and can handle 4-bedrooms. Given the space on the lot the current location is the only spot for the septic system given the size of the lot. David Drouin says that the 3-bedroom septic design was upsized to accommodate the fourth bedroom in the ADU. Dickler said it satisfied requirements for a 4th bedroom. Drouin added that the lot is very small and that was the only option.

Carmichael motioned to approve the variance as written with the stipulation that it satisfies the requirement for a four-bedroom system as needed for the ADU. **Second:** by Thomas **Vote:** 5-0-0 The variance is approved.

Old Business: Breckenridge said that ZBA function would be staying in the current location and would like to have hours and contact information posted on the office door. Kim will take care of it.

New Business: Deni said she would hand out what she was working on regarding the ZBA budget and fees and talk about it at the next meeting.

Meeting adjourned 10pm