

ZBA Meeting Minutes Tuesday November 24, 2020

Meeting called to order at 7:01pm by Chairman, George Carmichael. He asked the audience to mute microphones until called upon to cut down on the background noise. The following statement was read:

“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.”

Carmichael 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, the Rindge Post Office, and the Town Offices; how the hearing would progress, alternates and public participation; role of the five members sitting on the case; participation 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.

Following a brief discussion amongst Board Members regarding ending hearings by 10pm, Chairman Carmichael made a motion to stop hearing cases by 10pm but completing the case that are close to ending deliberation. Cases not heard would be continued to the October ZBA meeting. Bill Thomas seconded the motion.

Vote: Aye- 5, Nay – 0, Abstain -0

Chairman Carmichael opened the continued case #1150

Stenersen announced that he would be recusing himself from Case #1150

Chairman Carmichael appointed Dickler to sit on the case.

Kulla read the case into the record

Continuation of Case #1150: Continued from Tuesday, October 27, 2020, Erin Lovett and Margaret M. Lovett-Dankese, 19 Owen Way, Rindge, NH 03461, for property located at 19 Owen Way, Tax Map 6, Lot 20-3 in the Village District for a Variance from Article VI Section II of the Zoning Ordinance to permit a pet crematory as an allowed use.

Dickler summarized article VI for the record. Chairman Carmichael opened the continued of Case 1150 and announced that the following ZBA members would be participating in the hearing: Breckenridge, Thomas, Kulla, Dickler and Carmichael.

Chairman Carmichael announced that the case was continued and would then re-enter deliberation. He asked the applicant to state her name and address for the record and read her written statement into the record. The statement contained points related to the day-to-day operation of the crematory, detailed information from other pet crematories in NH, as well as data on actual day to day noise level measurements in the proposed area, air quality measurements and other topics raised during the deliberation of the board that she was not able to respond to (see attached statement).

The board thanked the applicant her for her comments and research and continued with discussing the issue of the variance decision would go with both present and future owners of the property, volume, and storage of animals prior to cremation. Other topics discussed included restriction of the number of employees, limiting the crematory to a certain size building, hours of operation, volume of business and related traffic, and home-based business in the Residential/Agricultural District as outlined in the Rindge zoning regulations.

Chairman Carmichael asked for further comments, hearing none he closed public comment and asked for a motion to enter deliberations. **Motion:** Bill Thomas motioned to go to deliberation. **Second:** Marty Kulla seconded the motion

Vote: 5-0-0-

The board went into deliberative session and determined that:

1. Granting the variance would not be contrary to the public interest because it is a large, isolated piece of land away from the traditional village setting and businesses and would not be contrary to the public interest. **Motion:** by Marcia Breckenridge, **second** by Deni Dickler. **Vote:** 5-0-0
2. Granting the variance would do substantial justice because it balances the gain to the general public versus the loss to the landowner. **Motion:** made by Marty Kulla, **second** by Bill Thomas. **Vote:** 5-0-0
3. The variance would be consistent with the spirit and intent of the Rindge Zoning Ordinance and because it is isolated it will not have a negative impact on the Village District. **Motion:** by Marcia Breckenridge, **second** by George Carmichael. **VOTE:** 5-0-0
4. Granting the variance would not diminish surrounding property values because it is a large, isolated piece of property and we heard from an abutter that he felt it would not affect his property value. **Motion** made by Bill Thomas, **second** by Marty Kulla **Vote:** 5-0-0
5. B The proposed variance would be a reasonable one because granting the variance would not be contrary to the public interest because it is a large, isolated piece of land away from the traditional village setting and businesses and would not be contrary to the public interest. **Motion** by George Carmichael, **second** by Marcia Breckenridge. **Vote:** 5-0-0

Motion: George Carmichael motioned to allow the applicant to speak to business hours, **second** Marcia Breckenridge. In response to the question on business hours the applicant stated that current operating hours are 6am to 10pm

Restrictions

- 1) The building should not exceed 2,400 sq. ft. as a maximum limit
- 2) The operating hours are limited to 7am – 8pm.
- 3) The building will be located approximately as presented on the conceptual site plan submitted with the application.

Kulla **motioned** to grant the variance with the restrictions as noted. **Second** by Thomas. **Vote:** 5-0-0

The Variance is granted

Case# 1152: Del Friedman, 42 Central Ave, Newtonville, MA 02460-1709 and C. Stephanie Cox Suarez Trust of 2005, for property located at 188 Red Gate Lane, Rindge, NH 03461-5786, Tax Map 34, Lot 3 in the Residential District, for a Variance from Article IV Section B.1 of the Zoning Ordinance to permit construction of a garage on a lot with frontage of one hundred and fifty (150) feet. A variance from Article IV Section B.2 of the Zoning Ordinance to permit construction of a garage five (5) feet from the edge of a right of way. A variance from Article IV Section B.3 of the Zoning Ordinance to permit construction of a garage on a lot of .79 acre. A variance from Article XIII Section E of the Zoning Ordinance to permit construction of a garage (accessory building) on a lot already containing a single-family dwelling.

Stenersen read the case 1152 into the record. Breckenridge summarized the relative zoning ordinances and Wetlands Conservation Ordinance for the record.

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

Applicant explained that he was trying to build a garage for parking and storage for his 30x30 cabin and the driveway is very steep. Due to the steepness of the driveway and the lot size he is requesting the garage be closer to the right-of way. He included photos of two possible locations for the garage in the application packet. Carmichael suggested combining the first three variance requests together and suggested a site visit. The applicant and the abutter agreed to a site visit for Saturday, November 28 at 10am. Carmichael made a **motion** to continue the hearing to Saturday, November 28 at 10am. **Motion seconded** by Kulla.

Vote: 5-0-0

The hearing is continued to 10am November 28th at 188 Redgate Lane.

Case #1153: Tyler Deruosi P.O. Box 124, Rindge, NH, 03461, for property located at US Route 202 West, Map 2, Lot 44, in the Wetlands Conservation District for a Special Exception as specified in the Wetlands Conservation Ordinance, Section 5.

Dickler read the case 1153 into the record. Thomas summarized the relative ordinances for the record. Breckenridge summarized the Wetlands Conservation Ordinance.

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

The project engineer said that his client, Tyler Deruosi, had recently applied for and received a curb cut on US Route 202 West and was planning to move his business DTS Tire from the current location, further west on Route 202 west to this location. The access point for the curb cut would require permits from the State on New Hampshire which have been applied for. The application was sent to the Rindge Conservation Commission for review. Con Com indicated that overall, they were happy to see that the applicant chose to take an approach with the least impact. They suggested that he install a shell arch to provide a crossing for small animals, which is included in the plan. Carmichael asked if there were any questions from the Board members and there were none. The ZOOM audience was also asked for comments and there were none. Thomas **motioned** to go into Deliberative session with a **second** by Breckenridge. **Vote:** 5-0-0

The board entered deliberative session and determined that:

1. The use will not create excessive traffic, congestion, noise, or odors because it is commercial use will be in a commercial zone. **Motion** by Breckenridge **second** by Stenersen. **Vote:** 5-0-0
2. The use will not reduce the value of surrounding properties because it will be a commercial use in a commercial zone. **Motion:** by Stenersen, **second** by Thomas. **Vote:** 5-0-0
3. There are adequate sewage and water facilities, and sufficient off-street parking is provided by the applicant. Stenersen **motioned** that this item does not apply to this case, **Second** by Breckenridge. **Vote:** 5-0-0
4. The proposed use will preserve the attractiveness of the Town, It is a Commercial use in a commercial zone. **Motion** by Breckenridge, **second** by Thomas. **Vote:** 5-0-0

Thomas **motioned** to grant the special exception, Kulla **seconded**. **Vote:** 5-0-0 the Special Exception is granted.

Carmichael said to wait 30 days before proceeding and a copy of the decision would be mailed to the applicant.

Case #1154: Revision Energy (Robert O'Brien, Commercial Project Manager), 7A Commercial Drive, Brentwood, NH 03883, and Craig Jensen (Farmer, Sun Moon Farm), for property located at 121 Thomas Road, Rindge, NH 03461, Tax Map 6 Lot 5 in the Residential Agriculture District, for a Variance from Article V Section B2 of the Zoning Ordinance to permit a 52.5-kilowatt (kW) solar photovoltaic array to be sited less than 50 feet from the Thomas Road right-of-way but safely set back behind a rock wall and trees, in accordance with the permit approval granted by the Town of Rindge in 2019.

Thomas read the case 1154 into the record. Stenersen summarized the relative ordinances for the record.

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

Chairman Carmichael opened the hearing and asked for an overview of the request. Attorney Laura Hart, Orr, & Reno represented Craig Jensen of Sun Moon Farm, Amanda Littleton Executive Director CCCD, and Dan Weeks Commercial Project Manager ReVision Energy were present via ZOOM. Laura Hart started with a satellite image of Sun Moon Farm, which is in the Residential Agriculture District on the old Quaker School property, and the location of the solar array, barn and house. She said the solar panel was located within 50ft of the setback and that they initially did not contemplate that the solar array as a building/structure. The panels are oriented to the southern exposure and can be viewed from the road. Amanda Littleton said that it's important that the current location of the array does not take away from the primary growing area designated as Prime Farmland by the USDA. A petition containing 86 signatures in support of Sun Moon Farm was included with the application.

Attorney Hart reviewed the following responses to the five questions from the application for the board:

- 1. Granting the variance would not be contrary to the public interest because:**

The Solar project is strongly supported by the Cheshire County Conservation District. The Conservation District asked Sun Moon Farm to host the solar array so that area farms can have reduced operating costs. It helps to keep area farms in business and preserves the agricultural heritage of Rindge. It would also help keep a local farm in business by reducing its operating costs. Helping Sun Moon Farm stay in business helps area families have access to fresh healthy food. The rock wall and a row of trees already separate the array from the road and creates a natural barrier between the road and the array, reducing the risk that drivers might hit the array. Without the variance, Rindge would lose approximately 5,000 square feet of prime agricultural soil (142B Monadnock fine sandy loam). Moving the array would intrude on the farms' agricultural operations and force them to remove land from cultivation.

2. Granting the variance would do substantial justice because:

The variance would benefit Sun Moon Farm and area farms recruited by Cheshire County Conservation District through reduced electricity costs, and there is no gain to the public, If the variance is denied because Rindge would lose 5,000 square feet of prime agricultural soils. There would only be a loss to the public, area farms, and Sun Moon Farm if the variance were denied.

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

The variance matches the intent of the Rindge Residential-Agricultural District. The district is intended to provide space for residents to live peaceful lives on and around working farms in keeping with the rural character of the Town, promoting public health and welfare. The variance would also help the Cheshire County Conservation District in helping to provide area farmers with reduced electricity costs, and through offsets from carbon emissions of approximately 65,000 pounds of CO2 emissions annually. In addition, the existing rock wall and trees will provide a safety barrier between the road and the solar array.

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

The principal use of the property would still be farming – only a small area would be devoted to the array, the existing rock wall and trees will provide a partial visibility barrier.

Studies show that surrounding property values increase when a solar array is in the neighborhood, Granting the variance saves prime farmland and helps area farms with their operating costs.

5.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 this property because:

The general purpose of the Ordinance is to promote the health, safety, and welfare of its inhabitants. Granting the ordinance meets the purpose by helping area farms and the families they support. It would be unfair and illogical to apply specific building setback to an array, which does not shelter persons, animals, or equipment. An array is not a building. Granting the variance is consistent with the general purpose of the Res Ag district, which is to help keep an area farm in business, reduces operating costs for other area farms, and preserves the agricultural heritage of Rindge. It's a way to save prime farmland from development and keep farms farming. She added that Sun Moon Farm is an active farm with fields that create jobs for area residents. She further stated that the alternative to granting the variance is to take prime agricultural soils out of production, which goes against the purpose of the Residential District.

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

The variance saves prime farmland, a finite resource in Rindge, that helps local farms. A solar array does not require the same setbacks that a house, barn, or storage shed would require, especially with a rock wall and several trees create a natural boundary between the right of way and the array, and it's reasonable to help a farm stay viable, especially in the Residential-Agricultural District.

Carmichael thanked Attorney Hart for the thorough presentation and asked for comments from the board and there were none. The hearing was opened to public comment Richard Mellor of the Rindge Conservation Commission said he supports the project, and it is essential for the Farm and sustainability. Becky Rill said she agreed with the project. Ron and Patty Osimo said that it's a fantastic farm and a fantastic project.

Thomas **motioned** to move to deliberative session, Breckenridge **seconded Vote:**
5-0-0

Motion by Carmichael to accept the responses to the five criteria as written in the application by Attorney Hart. **Second** by Kulla. **Vote:** 5-0-0

The variance is Granted

Case #1155: James and Sharon Grier, 418 Lakeside Boulevard, North Reading, MA, 01864 and Wendy Bruneau & Richard Swanson, for property located at 52 Florence Ave, Rindge, NH 03461 Map 46 Lot 10 in the Residential Zoning District for a Variance from Article IV Section B3 of the Zoning Ordinance to permit the proposed boundary line adjustment to add 0.05 acres, Parcel A, consisting of land and a beach area to Lot 9.

Marcia Breckenridge read the case 1155 into the record. Marty Kulla summarized the relative ordinances for the record.

Seated on the case Marcia Breckenridge, Bill Thomas, Marty Kulla, Phil Stenersen and George Carmichael.

Attorney John Ratigan presented the reasons for the variance to the Board.

Breckenridge **motioned** to enter deliberative session. **Second** by Thomas. **Vote:** 5-0-0. The board moved into deliberative session.

Carmichael **moved** to approve the variance as written in the application document below. **Second** by Thomas. **Vote:** 5-0-0

1. The variance would not be contrary to the public interest because it would not threaten public health, safety, or welfare, or alter the character of the neighborhood.
2. Granting the variance would do substantial justice because it would enable the owners of Lots 9 and 10 to correct a misunderstanding of where the actual boundary was between the two lots and enable the Lot 9 owner to have the beach front area on the Lake that they always assumed was their property of Lot 9. There is no gain to the general public that outweighs the benefits to the adjoining lot owners to be able to amicably straighten out this lot line, land ownership problem.

3. The variance would be consistent with the spirit and intent of the Rindge Zoning ordinance goals to promote public health, safety and welfare nor will granting the variance be inconsistent with either the character or values of the Town. This is a small lot line adjustment between two neighbors that will clarify their land ownership rights. No one else in Town will be affected by the minor boundary line adjustment that is proposed.
4. Granting of the variance would not diminish surrounding property values because the only ones affected by this lot line adjustment are the owners of the adjacent lots 9 and 10, who each support this variance and boundary line adjustment. And there will be no diminishing effect on surrounding property values if the variance is granted.
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 special condition is that the owners of Lot 9 have always used this beach area within Parcel A that fronts the lake under the assumption that the area was part of the Lot 9 property. The neighboring owners have now reached a mutually acceptable agreement to clarify the ownership of the land in Parcel A by means of a boundary line adjustment. This variance request is reasonable, and without it, it could leave Lot 9 as a lot with no beachfront access. This is clearly an unnecessary hardship that the neighbors have worked out a solution to.

Carmichael reminded the applicant to wait 30 days in the event of an appeal and that a letter would be sent.

Approval of Minutes: October 27th and October 31st

Other business that may come before the board.

Meeting Adjourned 9:51pm