

June 22, 2021, ZBA Meeting Minutes

Members present: George Carmichael, Chair, Marcia Breckenridge, Vice-Chair, Deni Dickler, member, Bill Thomas, member, Phil Stenersen, member

Others present: Josh & Radisse Day, Thelma Zelen, Sandra Zelen, David Drouin, Richard Mellor, Dennis and Sandra Buzzell, Ashley Saari, David Lagakos, John Ratigan, Nate Chamberlain

Meeting called to order at 7pm by Chairman, George Carmichael with the Pledge of Allegiance. Members and alternates introduced themselves.

Carmichael explained 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 5 voting members participate. When a regular member is absent or recuses, the Chairman appoints an alternate to sit on the case. Carmichael asked if there were any recusals for the evening's cases and there were none.

ZBA Clerk, Kim McCummings, announced that the notice of the Public Hearing was posted in the Ledger/Transcript, on the Town of Rindge Website, at the Rindge Post Office, the Rindge Town Office and the Ingalls Library.

Carmichael opened the hearing for Case 1170, announced that Carmichael, Breckenridge, Stenersen, Thomas, and Dickler would be seated on the case and read the following into the record: Rindge Conservation Commission, 30 Payson Hill Road, P.O. Box 163, Rindge, NH 03461, for an Appeal of a Decision of the Planning Board, April 6, 2021 for approval of the Major Site Plan for Self-storage on Map 2, Lot 59-3-1, relating to The Rindge Wetlands Conservation District Ordinance, Section 4G, 6, 7A & B. Breckenridge read the related ordinances into the record.

Carmichael opened the testimony phase of the hearing and Richard Mellor; Vice-Chair of the Conservation Commission provided the following background information. The Commission originally sent a letter to the Planning Board regarding their decision on the project suggesting they

amend their approval to suggest to the applicant that relief was needed to proceed as the plan was submitted. They chose not to address that and not amend their approval. The Commission decided to move forward with the Appeal of Administrative Decision on the approval of that project. Letters were sent to the Planning and Zoning Boards included a highlighted map of the plan with highlighted areas to indicate the affected area of wetlands, to be affected if the plan as submitted was approved. Section 4 of the ordinance, the language in the opening paragraph says, “any of the following in the wetland conservations districts unrelated to or not precedent to the erection of any building or expansion of any structure,” this entire project is precedent of the expansion of the building footprint, and it needs a variance. Some sort of relief is required to proceed. Looking at the plan if one or two of the buildings were shorter, they would not need a variance. There are other options that would not require encroachment into the wetlands. The Commission believes that if the proposed building was smaller no relief would be needed because the wetlands would not be an issue. He added that there are two workable options that the Planning Board could use and hopes this case is remanded to them.

David Drouin, Chair of the Rindge Conservation Commission, added that on the original plan the driveway is currently in a buffer zone. We had no luck finding a variance in the files on this property. This additional work would not fall under Section 6, uses permitted by Special Exception that addresses the access. We don’t feel it would be appropriate as the property already has access, this is clearly an expansion. Section 6 is not for maximizing or expanding only for access, and they have already done that. If they decide they want to move forward they can move forward under a hardship, under the Board of adjustment. Carmichael asked, if he was in agreement with Mr. Mellor that they could revise this to avoid needing relief. Drouin said yes, but it is not a decision of the Planning Board.

Drouin said it has been commented that drainage is part of the utility application and falls under a utility’s ordinance. If you are bringing water or electrical to a site, you have more leeway to bring it to a site. We have found no evidence that bringing drainage to a site is a utility. The buffer is part of the wetland.

Attorney John Ratigan raised the issue of a sitting member who is on both the ZBA and the Conservation Commission participating in the case. He

referenced the Jury Standard and said he respected her public service, He felt that Dickler should recuse herself from this case. Attorney Ratigan read a letter into the record. Carmichael asked Dickler if she would be stepping down from the case. She said that she had no direct involvement in the Con Com case, she was at the meeting, but not in a decision-making role. A brief conversation took place.

Carmichael asked Drouin if he had any concerns regarding Dickler sitting on the case. Drouin said she's an alternate to the Conservation Commission not an elected member. She did not draft the memo that was submitted, that it was his language and his words. Mellor said that he has served as chair of Con Com and as far as Deni being an alternate in this decision, she was not involved and did not vote. Drouin said Dickler was not involved in the decision to move forward on the case before the Board. He said she was at arm's length on this case. Dickler said that given her lack of involvement in the case, she did not see any reason that she would be biased and would not be recusing herself. Carmichael said that the discussion would be kept for the record.

Nate Chamberlain, Engineer on the project, said that it comes down to the difference between interpretation of the Conservation Commission versus the Planning Department and how Planning Boards have been interpreting it for several years.

He said they wouldn't be there if it hadn't been for the interpretation. There appears to be a clear record of plans like this being allowed.

Chamberlain said he wrote a letter to the Board and read the letter into the record and included comments from Planning Director, Kirk Stenersen. He showed the location of the impervious surface that was located on the plan, gave a timeline of application submission and hearing before the Planning Board. During the review process no objections were filed regarding the plan. He believes the work proposed within the wetlands setback on the approved plan was not opposed because it is exempt from the restrictions as stated in Wetlands Ordinance Section 7B. Chamberlain pointed out the area in question on the plan. He said the plans are consistent with other plans like Discount Tire Service that had the same type of issue as Patriot Holdings. A letter received from Planning Director, Kirk Stenersen on May 27, 2021, was read into the record regarding the historical interpretation of

the Wetlands Conservation Ordinance by the Planning Board. Carmichael said that it seemed that the fills that were being used stated in Section 5 Sub Section 4G is what's in question and Chamberlain agreed. Chamberlain showed photos of the plans in Question, DTS, Traven, Colonial Green, an Elderly Housing with 16 Units, and a Jamie Van Dyke project. Carmichael asked if these cases represent applications that have gone before the ZBA. Chamberlain said no, these are cases that have gone before the Planning Board. Breckenridge said she wanted to know why we haven't heard from Con Com, about why there was no comment, and what did they have to say about this. Drouin said Con Com should have received a copy of the letter from Fieldstone and the one from the Planning Director and we received nothing from either the Planning or Zoning Office. We usually would submit an opinion letter, and he requested a copy of the document from Chamberlain. Drouin said the Planning Director is not the Code Enforcement Officer. We have a Code Enforcement Officer. He is a Planning Director. The Planning Board does not have enforcement responsibilities.

Drouin said that 7B does not apply. If you look at their plan the trees to be removed for the new building are outside the buffer. Con Com is concerned about the trees that are being removed within the buffer. The building is a few feet away from the buffer line. So, if you were going to support the argument that you wanted to do grading to the building there's nothing in the ordinance that allows it. Remember the State of New Hampshire is permissive. If it's not permitted, you need relief to do it. If you don't fit one of the four or five categories, it's not allowed.

Drouin said he looked though the State of NH and other sources and drainage is not a service. The work at DTS was reviewed as part a Special Exception application of the wetland crossing. DTS was for the access to the property. This is for the expansion of the property. The Vandyke plan has been retracted, modified and resubmitted the applicant removed the buffer. There is no prohibition for grading in the buffer, but it is not permitted. This is an expansion of the work. Richard Mellor said it's an expansion that can be accomplished by slightly truncating the two buildings.

Chamberlain said the Conservation Commission has taken it upon themselves to target this project. Board members asked Chamberlain where

in the regulations do you see that this is permitted what section?
Chamberlain cited Section 7B, which does not address the issue.

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

Motion: by Thomas to enter Deliberative session **second** by Breckenridge
Vote: 5-0-0 the Board entered deliberative session and determined that

Thomas said it looks a lot more like encroachment. To Richard's point Con Com never got a chance to look at it, and the Planning Board never told them about it. They just happened upon it. We should at least give them a chance to review it. And if they need to seek relief as a variance then do that. Dickler said it was a tough one, Nate and Attorney Ratigan have made some valid points. There is some real ambiguity. It raises questions about what they are actually doing and is it actually permitted. They should take it back to the Planning Board, have them take a look at it have Con Com take a look at it, and do it quickly, because time is money. Breckenridge said she was troubled by the process that if there was a wetland issue that the Conservation Commission wouldn't automatically be involved. We should have a process where they are all included in the process. As Mr. Ratigan suggested I would like to see that addressed. Stenersen said in cases before us similar things have been done. The fact is there's stuff going on in the wetlands buffer. It's a protection area to protect the wetlands. Similar things have happened and have been approved. Carmichael said that these things are different. What I have a bit of a problem with is that the all the Conservation Commission was looking for was being part of the process and they weren't afforded that. The question is do we think that the Planning Board correctly or incorrectly interpreted this application and why. Thomas said they didn't, because they didn't involve Con Com. We generally expect to hear from them with an opinion if there's a wetland or conservation issue. Breckenridge said she expects to have various avenues and voices to be heard. Carmichael asked did the Planning Board correctly or incorrectly interpret NH RSA's and/or Rindge Zoning Ordinances. Breckenridge said it was one narrow viewpoint because it didn't hear input from anyone beyond the Planning Board. Dickler said in protecting the health safety and welfare of our inhabitants. I think there was a failure to act on other input. There's a difference between ethical and legal, and that's unfortunate for the applicant. Carmichael reminded the Board that as per the appeal, we can only review for correct interpretation of NH RSA's and/or The Rindge Zoning

Ordinances. Breckenridge then made a motion, seconded by Thomas that was entered into the final decision for a vote.

APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the NH RSAs and/or The Rindge Zoning Ordinance by:

Code Enforcement Officer _____ Planning Board X Building

Inspector _____

Board of Selectmen _____ Other _____

A. Then Rindge Board of Adjustment finds that the **Planning Board** was **NOT CORRECT** in the interpretation of the NH RSAs and Rindge Zoning Ordinances because:

1. The Rindge Board of Adjustment finds that the Planning Board did not make a decision that correctly interpreted sections 4, 5, 6, and 7 of the Wetlands Conservation District Ordinance.

The Board **APPROVES** the Appeal from an Administrative Decision

Vote: 4-1-0, no vote Stenersen

Carmichael opened the hearing for Case 1171. **Case 1171:** Dennis C. Buzzell, 15 Surry Park, Rindge, New Hampshire, Map 27 Lot 19 in the Village District, for a Variance from Article 4, Section B-2 Frontage, Yard and Area Requirements, to install a storage shed on the property. Sitting on the case was Breckenridge, Stenersen, Thomas, Dickler and Carmichael.

Dickler said that in preparing for the hearing she discovered the lot in question a) is a non-conforming lot and b) that the lot actually abuts the Rindge Historical Society, not the Rindge Elementary School as was noticed. The Historical Society was not noticed for the hearing as is required. Following a brief discussion Carmichael confirmed that the applicant, Mr. Buzzel would be available on July 27th **Carmichael motioned** to continue the Hearing to July 27th at 7pm and send a Hearing Notice to The Rindge Historical Society. **Stenersen seconded** the motion. **Vote: 5-0-0**

Carmichael opened the hearing for Case 1172. **Case 1172:** Ross R. Tourigny, Builder, 86 West Main Street, Rindge, NH 03461 for Thelma Zelen, 162 Swan Point Road, Rindge, NH 03461, in the Residential Agriculture District, for a Special Exception as specified in the Accessory Dwelling Unit Ordinance, Section 2. Phil Stenersen summarized the relative ordinances.

Sitting on this case were Breckenridge, Stenersen, Thomas, Dickler and Carmichael. Carmichael asked Mr. Tourigny to provide an overview and he started with the drawings. Dickler asked about the square footage of the primary dwelling unit. Tourigny said roughly 2200 sq. ft. and the house was built in the early 90's. Dickler said that would mean the ADU would have to be 300 sq. feet to 750 sq. feet. Tourigny asked if it was more square footage would that make a difference? Deni said on the building permit it is 36ft by 40ft including the deck. He said the square footage of the proposed unit would be 1440sq ft and the maximum they could have would be 750sq ft. Carmichael said, he's way outside of that. Tourigny said the only thing that came up as an issue was the lot size. He said he became part of the project a short time ago. Drouin said that the application came through the Building Department because of the Shoreland Permit and that was when Con Com learned about it. Dickler said you could make it smaller. Carmichael said for an application for an ADU that can't be approved because of the size. If they decide to go to a variance, it would be a new application. If we are trying to save them the money, he could just continue the case. You would just break it down smaller or come back as an ADU at 750 sq. ft.

The applicant said they would like to continue to the next meeting on July 27th. **Motion by Carmichael** to continue to July 27, 2021 meeting. **Second** by Thomas. **Vote:** 5-0-0. The hearing is continued to July 27, 2021.

Approval of Minutes: Carmichael motioned to accept the minutes of March 23, 2021, and April 27, 2021, second by Breckenridge, Vote: 5-0-0. The minutes are approved.

The minutes of May 25, 2021 were moved to the July 27, 2021 agenda.

Review of Rules of Procedure - moved to the July meeting.

Other business that may come before the board.

Motion to adjourn.