



**RINDGE BOARD OF ADJUSTMENT**  
**30 PAYSON HILL ROAD**  
**RINDGE NH 03461**  
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### **August 23, 2022 ZBA Meeting Minutes**

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

**Members present:** Terrence Fog, Alternate, Bill Thomas, Member; George Carmichael, Chair; Marcia Breckenridge, Vice-Chair; Phil Stenersen. Member; Ross Thermos, Alternate

**Members absent:** Marty Kulla

**Others present:** Nancy & Rob Levada, William Hillis

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 Public Hearing was posted in the Ledger/Transcript, Rindge Post Office, the Rindge Town Office, the Ingalls Memorial Library and the Town of Rindge Website.

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.

Chairman Carmichael opened the hearing for Case 1193. Sitting on the case was Marcia Breckenridge, Bill Thomas, George Carmichael, Phil Stenersen, and Terry Fogg.

Stenersen read Case 1193 into the record.

**Case 1193:** William D. Hillis, 58 Homestead Lane, Rindge, NH 03461 for property located at Tax Map 2 Lot 3-1-1, in the Residential Agriculture District, for a Variance from Article 1V, Section B2 of the Zoning Ordinance that requires buildings to be no closer than fifty (50) ft from the edge of a right-of-way. The applicant is proposing to construct a greenhouse 26ft from the Homestead Lane right-of-way.

Bill Thomas summarized Article IV Residential District, Section B 2 yard, for the record.

Carmichael welcomed applicant William Hillis, owner of the farm on Robbins Rd, and asked him to summarize why he is seeking a variance. Mr. Hillis said that he had a greenhouse that he would like to put on the property. He has an orchard, and physically this is the only place he could put it without taking down trees and without it being in the shadows of other trees. He said there was a berm along the main road and didn't think anyone would notice it there.

The Board reviewed the photos submitted with the application. Thomas asked about the structure currently on the plan marked as under construction. Hillis said it was to be a cider house and was a much larger structure. Thomas asked about the field and why the new structure couldn't go there. Hillis said with the trees there would be a lot of shadowing from the fruit trees, and we would want to avoid that. Breckenridge asked, with just about 59 acres of land, why the greenhouse couldn't be within the 50ft setback somewhere else on the property. Breckenridge asked if the fruit trees were new or been there awhile and was that why he was concerned about them? Hillis said they've been there for 2 or 3 years now. Carmichael asked if there was a plan and added that with 50 or 60 acres of land you still have the opportunity to move a few small trees to bring the property into code. Hillis said it would be expensive. Hillis said in hindsight having had a plan for the property would have made sense, but they made decisions as they went along.

Carmichael said the Board received letters from abutters Peter Bumpus and David Smith and asked Board members if they had any questions or comments about them. Stenersen said that there was one other house across from the applicants' house on Homestead Lane. Carmichael asked about the location of other abutters in relation to the greenhouse. Thomas said that the Bumpus letter didn't have as much to do with the project itself, but more about other work that is taking place. Stenersen pulled up an image of the property on Google Earth with locations of the existing orchard and structures on the property.

Carmichael asked if there were any abutters in the audience Rob Levada said Peter Bumpus live on the other side directly opposite Homestead Road. Mr. Lavada said most of the property is orchard, there are apple trees, and the land also slopes and there are existing wells and pipes to work around. Tree experts were consulted with regard to placement of fruit trees etc. He also added that some of the land is in conservation and can't be used for buildings.

Carmichael said we heard three abutters say that their preference would be for the structure to be setback further on the property versus being closer to the road and that it appears to be an adjustment that can easily be accomplished.

Breckenridge asked about the vegetable stand Hillis mentioned. He said it would be for overflow produce that the family could not use.

Carmichael asked for additional questions. There were none.

**Motion:** by Thomas to go into deliberative session **Second** by Carmichael, **Vote** 5-0-0

Carmichael said they have 58.9 acres of land and to Bill's point there is a path to eliminate the need for a variance. Thomas said the variance doesn't seem necessary. Stenersen said we have the setback requirements to preserve the rural character of the Town.

Breckenridge suggested sharing the decision tree with the audience and copies were distributed.

Thomas said the arguments being made are not enough of a reason to approve a Variance. Carmichael said that due to the large lot size there are other options available.

The Board reviewed and responded to the following items in the variance decision tree.

**1. The variance would be contrary to the public interest because:**

Because it failed the five criteria.

*A variance is contrary to the public interest if it violates “basic zoning objectives” by, for example, altering the character of the neighborhood or threatening public health, safety, or welfare.*

*Would granting the variance would unduly, and in a marked degree, conflict with the ordinance such that it violates the ordinance’s basic zoning objectives? Would the result of granting the variance would be to violate the ordinance’s basic zoning objectives?*

*In addition, it is no longer relevant for the ZBA to consider whether the applicant could achieve the same results by another means that conforms to the ordinance without the need for the variance.*

**Motion by:** Breckenridge      **Second:** Carmichael      **Vote:** Yes: 5-0-0 No: 0-0-0

**2. Granting the variance would not do substantial justice because:**

*This requires a balancing test; a loss to the landowner that is not outweighed by a gain to the general public is an injustice. The Board should identify the loss the landowner would suffer if the variance is denied, and weigh it against the interests of the public. In other words, any loss to the individual that is not outweighed by a gain to the general public is an injustice.*

There are other viable options for the green house location.

**Motion:** by Breckenridge      **Second:** by Thomas      **Vote:** Yes: 4-0-0      No: 1-0-0

**3. The variance would not be consistent with the spirit and intent of the Rindge zoning ordinance because:**

*The intent of the ordinance is to promote health, safety and welfare, and to preserve the values and character of the Town; consider whether the variance is inconsistent with these goals.*

The variance would not be consistent with the spirit and intent of the Rindge Zoning Ordinance because the applicant could achieve the same results by another means that conforms to the ordinance.

**Motion:** by Carmichael **Second:** by Breckenridge **Vote:** Yes: 4-0-0 No: 1-0-0

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

*Evidence from an appraiser or realtor would be relevant; the Board can also rely on its knowledge of the area.*

No evidence was presented from an appraiser or realtor.

**Motion:** by Breckenridge **Second:** by Carmichael **Vote:** Yes: 5-0-0 No: 0-0-0

**5. Special conditions do not 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 unique features or special conditions should be identified):

*The issue is whether the proposed variance is a reasonable use of the property, given the special conditions. Stated another way, the applicant does not have to demonstrate that its proposed use is “necessary” to the operation of the property.*

There are no special circumstances.

**Motion:** by Breckenridge **Second:** by Carmichael **Vote:** Yes 5-0-0 No: 0-0-0

- 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 the property because:**

*Consider the purpose of the zoning restriction and whether applying it to the specific property serves the purpose of the Zoning Ordinance.*

NA.

**Motion:** by Breckenridge **Second:** by Carmichael **Vote:** Yes: 5-0-0 No: 0-0-0

AND

- b. **The proposed variance would not be a reasonable one because:**

*Owing to special conditions that distinguish the property from others in the area, "the property cannot reasonably be used in strict conformance with the ordinance," and a variance is necessary for its reasonable use.*

Special conditions **do not exist** on the property to distinguish it from other properties in the area such that literal enforcement of the ordinance results in unnecessary hardship.

**Motion:** by Carmichael      **Second:** by Breckenridge      **Vote:** Yes: 5-0-0    No: 0-0-0

The variance is denied.

**Approval of minutes:** Breckenridge motioned to approve the minutes of July 26, 2022. Second by Thomas. **Vote:** 6-0-0    The minutes are approved.

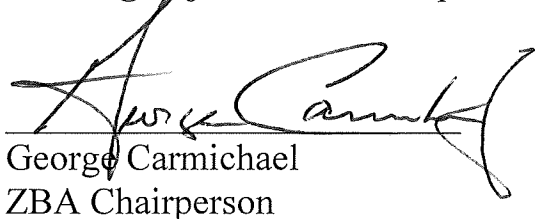
**Other business:**

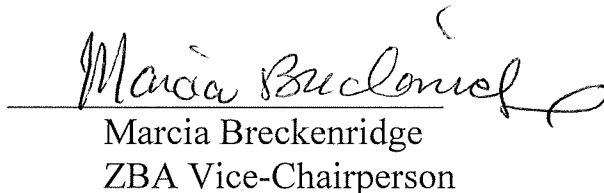
Carmichael said that variance fees need to be increased as other ZBA application fees have been raised. The fees should be changed from \$175 to \$250. Carmichael motioned to increase the variance application fee up to \$250.00 effective immediately. The motion was seconded by Thomas. **Vote:** 7-0-0

Carmichael shared information on reviewing changes to Zoning regulations online and said everyone should review the information and take the quiz as soon as possible.

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

**Meeting adjourned** at 8:20 pm

  
George Carmichael  
ZBA Chairperson

  
Marcia Breckenridge  
ZBA Vice-Chairperson