

**APPROVED**  
**Zoning Board of Adjustment**  
**Meeting Minutes**  
**May 31, 2016**

**Members:** Steve Filipi, Gretchen Wittenborg, Bob Handy, Jack Ernst and Carmen Yon, ZBA Alternate, seated for Cathy Davis.

**Others Present:** Susan Silverman, Selectmen's Representative, Frank Bateman and Dorothy Zug, and Norman and Joan Dion, Paul Grasewicz.

**CTO:** 7:00 PM.

**7:00 PM Public hearing continued. David and Margot LaPointe** application appealing, under RSA 674:41, II, from an Administrative Decision of the Board of Selectmen denying a building permit for property located at 25 Rantilla Lane, Map 38, Lot 9, Rural District.

Mr. Grasewicz joined the Board with Mr. LaPointe, and presented an overview of the site development plan he had done in 2012, which included soil testing, septic design, and a Shoreland plan. Further planning was suspended when the Board of Selectmen refused to issue a building permit for the site, nor did the LaPointes pursue an appeal to the ZBA at that time.

Filipi asked what the state might require now in regard to the structures on the shoreline and naturalization within the 50 foot setback. Mr. Grasewicz said there was no plan yet, however, the state may require that impervious areas be removed, and the state may ask to see even more. Filipi noted that the first 50 feet from the shoreline is significant. Mr. LaPointe said he would do whatever the state requests. Mr. Grasewicz said they may want to bring it back to a more wooded condition with a specific vegetation count.

Filipi said the Board may ask that a turn-around for emergency vehicles be created. Mr. LaPointe noted emergency vehicles have been down the lane and have turned around.

Yon asked about the percentage of pervious and impervious surfaces allowed. Grasewicz said gravel driveways and wooded decks are considered impervious. Yon asked how the existing patio fits into that. Wittenborg said the tax card shows 900 sf patio area, but she thinks it is more than that, adding it would not be possible to put that patio in now. Mr. LaPointe said he is not planning to remove the patio unless the state requires it.

Filipi asked what the state's position might be regarding the sand beach Mr. LaPointe created. Grasewicz said that if the beach is preexisting, the state usually will not require its removal, adding that sand is a pervious surface. Mr. LaPointe said woods chips are so considered as well.

Filipi asked if there were questions or comments from the public. Ms. Zug said the long stone wall that was erected has changed the drainage pattern. Grasewicz said his plans had called for a water storage/recharge basin at the end of the wall to reduce the water sheet flow into the lake. Mr. LaPointe asked how the water flowed prior to the stone wall construction. Grasewicz said it was not much different since the grades had not changed. He added that he will look at the whole project again to see if or how things have changed since he last worked on this property.

Handy asked about a well and Mr. LaPointe said it will be above the proposed new house, noting that there is an old dug well down by the existing camp on the water.

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**May 31, 2016**

Filipi asked if there were other comments. Hearing none, he said he had been thinking about the area within the 50 foot Shoreland and that he would want to see it returned to natural with 50 points. Mr. LaPointe asked if he wanted to remove the beach. Filipi said that decision has not been made, adding that he was expressing his thoughts, not decisions of the ZBA members.

Filipi would like to see 50 points in every grid, an emergency vehicle turn-around, a legal release of liability for the Town, and bonding for all the corrective work to be done on the shoreline to come into compliance with the Town and State. Mr. LaPointe asked how much of a bond, and Filipi said that if the work is done by Mr. LaPointe it would probably cost about \$20,000 but if the Town had to do it, it might cost as much as \$50,000. Mr. LaPointe felt that a \$50,000 bond was too high. Wittenborg noted that there has been no discussion or decision about a bond. Ernst said it depended on who has to do the work.

Filipi asked if all the existing buildings would be removed and Mr. LaPointe said yes. Filipi asked for the Board's thoughts regarding the beach and the patio. Yon said the sand that was put there needs to be permitted by the state, and he needs to get a dock permit from the state too. Mr. LaPointe said that both were "in the works." Yon added that he would like to see the property brought back to what it was. Yon was not sure about the retaining wall, noting it would be expensive to remove. Ernst agreed with Yon, adding that the retaining wall may be up to the State to decide. Mr. LaPointe said the State has inspected the property but has issued no decision yet.

Handy said that whatever the State decides is OK with him. He thinks both the patio and the wall needed a permit. Wittenborg agreed, saying the board may want the stone wall and patio removed and permits issued for the sand beach and the dock.

Wittenborg raised the issue of the right of way. She noted that her research showed that the deeds show that Mrs. Dion's father, Mr. Rantilla, deeded right to passage on Rantilla Lane to the property owners Bateman, Lymberg and Dion. Wittenborg read the criteria for 674:41 II to apply. Rantilla Lane is not on an official town map, and it appears to be a shared driveway for seasonal usage, except for the former Phyllis Bateman property. Grasewicz said he surveyed the travelled way. Wittenborg noted that from that plan, the private way/easement runs over land currently owned by the Dion family, on the east side of the subject property.

Wittenborg noted that the original letter to the La Pointes denied a building permit based on 674:41, II, stating that they had no information leading them to believe that the proposed access meets any of the criteria set forth in the RSA. She confirmed with Selectman Silverman that this lane was not a Class V road, nor is it a Class VI road. Ernst noted that one criteria deals with private roads.

Wittenborg said that she doesn't see the Town taking responsibility for maintenance of the road. She felt that 674:41 II. applies, in that enforcement of the 674:41 I. would always entail practical difficulty and unnecessary hardship, and is why this case is before the board. Yon noted that the Ravenwood Trust case several years ago was similar. However, in that case access to the property was from a different state.

Wittenborg said that this lane is not an existing or proposed street, and it is not confirmed that it is a private way. It is a legal question whether or not it is a private way. Mr. Harris said that when he bought his property, there was not street sign, but now there is. Selectman Silverman said that is because the Town uses 911 numbers and every street has a name and every house has a number for emergency response purposes.

**APPROVED**  
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**Meeting Minutes**  
**May 31, 2016**

Mr. Dion said the access was named Rantilla Lane by the Dions at the request of the town.

Grasewicz pointed out that building permits have been issued on easements in the past, citing White Tail Lane with 4 houses on it on Laurel Lake.

Ms. Zug shared the 1956 and 1964 surveys with the Board, showing the original division of land and the Rantilla Lane right of way easement.

Filipi asked if Wittenborg and the Board were proposing that more research be done to determine the rights to access from Rantilla Lane and perhaps clarify the status of the Lane and interpretation of the phrase “as now used.” Wittenborg wondered if this was an expansion of those uses. Grasewicz said he would do some research as well, since he believes he did a boundary survey in 2005. Wittenborg asked to see it in advance of the meeting. Mr. Dion said he had a deed that might shed some light on the issues and will share it as well.

Wittenborg moved, Handy seconded and the Board continued the public hearing to June 14, 2016 at 7:00 PM.

**7:30 PM Public hearing continued. Kim Arel** application for a variance to build a 16’ x 32’ addition to a residence located at 11 Angier Road, Map 28, Lot 14. The proposed addition will violate the 50’ setback from the road as is required in the residential district.

Josh Gagnon, contractor and neighbor, represented the Arels at the meeting. The Board reviewed the new sketches provided by Mr. Gagnon, clarifying the location of the existing house and proposed addition showing measured setbacks. The yard on the Columbia Road side will be fenced. The existing house is 45 feet from Angier Road as is the addition, which is why they have applied to the ZBA for a variance for the addition.

Filipi moved, Handy seconded and the Board voted to close the public hearing. The Board reviewed the criteria for granting a variance.

*a) The variance will not be contrary to the public interest;* Wittenborg described the project as being a positive for the neighborhood, it is attractive and supports the public interest. Filipi said the addition matches the neighborhood in setbacks and density. Filipi, Wittenborg, Handy, Ernst and Yon voted in the affirmative.

*b) The spirit of the Ordinance is observed:* The Board agreed that the project does not add any negative aspects to the town or the neighborhood. Filipi, Wittenborg, Handy, Ernst and Yon voted in the affirmative.

*c) Substantial justice is done;* The Board agreed that it is a small house and an addition is an appropriate expansion. Filipi, Wittenborg, Handy, Ernst and Yon voted in the affirmative.

*d) The values of surrounding properties are not diminished;* The Board agreed. Filipi, Wittenborg, Handy, Ernst and Yon voted in the affirmative.

*e) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship;* The Board agreed. Filipi, Wittenborg, Handy, Ernst and Yon voted in the affirmative.

Filipi stated that the variance is granted.

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**Minutes.** The Board reviewed the May 10, 2016 meeting minutes. There were several amendments. Ernst moved, Wittenborg seconded and the Board approved the minutes as amended.

The Board reviewed and approved the minutes of the LaPointe site walk on May 11, 2016

**Raitto Rehearing appeal.** Wittenborg chaired this deliberation. Filipi recused himself as party to this case.

Wittenborg noted that the Board needed to make a decision regarding the Raitto appeal for a rehearing of the Board's decision to grant a variance to Blue Sky Towers, LLC to site a T-Mobile cellular monopole tower on property belonging to Filipi Contracting, LLC on the Pinnacle with access from Upper Troy Road. The property abuts property owned by Russ Raitto. Wittenborg stated that the motion for rehearing called the ZBA decision flawed. She recalled that the Board amended the notice of decision incorporating the Board's findings on the criteria for granting a variance, which were part of the May 10, 2016 Public Hearing minutes.

Referring to item 10 in the appeal for rehearing, she noted that it refers to the WiValley agreement as the basis for the Planning Board to amend its December 2, 2008 decision. Selectman Silverman and Wittenborg stated that was not the case. The Planning Board amended their decision because WiValley and the Raittos reached an agreement to settle their court case. Wittenborg noted the agreement was signed by WiValley and the Raittos.

The Town has not heard from Attorney Bentley regarding disposition of the rehearing appeal. Mr. Raitto was present at a balloon test and was reported to be satisfied that the tower would not infringe on the viewshed from his house, which was the criteria he set as a threshold for an appeal. The Board had postponed making a decision regarding the rehearing, because they expected to hear from the attorney following the balloon test. Wittenborg said that if the rehearing is denied, the case may go to the 1<sup>st</sup> circuit court. The Board agreed to decide the appeal based on its merits, rather than proceed based on the fact that technically the appeal was received after the deadline. Yon noted this appeal did not present any new information and the Board had addressed all the issues raised in the appeal during the public hearings that were held. Handy moved, Yon seconded and the Board voted unanimously to deny the appeal for a rehearing.

Ernst moved, Wittenborg seconded and the Board adjourned the meeting at 8:50 PM.