



## RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD, PO BOX 163

RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964

www.town.rindge.nh.us

### Zoning Board of Adjustment **APPROVED** Public Hearing Minutes November 25, 2008

**Regular members present:** Chairman Joseph C. Hill, George Carmichael, David Drouin, Janet Goodrich and Marcia Breckenridge.

**Alternate members present:** Richard Feldman and Charlie Eicher.

Hill opened the Public Hearing at 7:00 pm with the Pledge of Allegiance. The members and alternates introduced themselves and their status.

Hill stated he would recuse himself from Case 995 and that the Vice Chairman would appoint an alternate member to sit in his place. He stated the rules for the hearing and that it would end by 10:30 pm.

The Clerk announced that the notice of Public Hearing was posted in the Town Office, Police Station, Fire Station, Library, Transfer Station, Post Office, and the Monadnock Ledger-Transcript.

Drouin requested that the Minutes from October 28 be taken up at this time since all parties had not arrived for the first Public Hearing. Hill stated that the name "Pena" on page 3 should read "Pini." Drouin called attention to the sentence on page 3 which read "After discussion a motion was made by Breckenridge, seconded by Eicher to maintain the current budget figure" and stated that Eicher could not second this motion because he was not a voting member. After discussion, the motion was reopened and seconded by Goodrich. Relative to the October 28, 2008 Minutes, Drouin stated that the following should be added on page 2, paragraph 2a: "The property has a unique setting because the material is already on site."

**Case #995: Daniel B. LaBell, 104 Lachance Drive, Rindge, NH 03461, Map 17/Lot 17 for an Appeal from an Administrative Decision by the Code Enforcement Officer dated September 10, 2008 relating to Article IV of the Rindge Zoning Ordinance and Section 5, Paragraph B 2 of the Wetlands Conservation Ordinance.**

Carmichael appointed Eicher to sit on the case. Goodrich read the case and Eicher summarized the Ordinance(s). Sitting on this case: Mrs. Breckenridge, Mr. Carmichael, Mr. Drouin, Mr. Eicher & Mrs. Goodrich.

Mr. DuVernay presented a memo to the Board stating that since Mr. LaBell had furnished the Town with written testimony that two of the rock walls and the shed in question were



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constructed on the property prior to his ownership, he would rescind the demand for their removal and suggested he seek a Waiver of Dimensional Requirements for them. However, Mr. LaBell had constructed the rock wall inside the reference line of Lake Monomonac and filled in behind it with sand, which violates Section 5 of the Rindge Wetlands Ordinance and requested its immediate removal.

Mr. Gartrell spoke on behalf of Mr. LaBell. He stated the rock wall in question was built to combat erosion and presented a letter from neighbors who expressed their appreciation for the wall and requested it remain as an erosion barrier. Mr. Gartrell also presented a letter from the DES and stated they are working with them to resolve this issue. He summarized the history of the walls, at which time Carmichael stated that the Board's duty was only to decide if the Code Enforcement Officer's decision was the correct one or not. Gartrell stated the Board should know the history of the wall before making its decision and asked to show pictures of the erosion that was taking place. Carmichael and DuVernay objected and stated that he would have the opportunity to argue those points if the case went back before the Selectmen. After further discussion, Drouin moved, seconded by Breckenridge to close discussion and move into deliberations and the motion passed unanimously.

**The Board found that the Code Enforcement Officer was Correct in the interpretation of the Rindge Zoning Ordinance and the Wetlands Conservation Ordinance because:** The Code Enforcement Officer's decision was valid since the dimensions and location of the wall closest to the water violated the Ordinance and all parties agreed to this fact.

A motion was made by Drouin, seconded by Breckenridge to Deny the Appeal from an Administrative Decision and uphold the decision of the Code Enforcement Officer, and the motion passed unanimously.

**Case #996: Southwestern Community Services, PO Box 603, Keene, NH 03431, property address: 30 Payson Hill Road, Rindge, NH 03461, Map 28/Lot 13 for a Special Exception from Article V, Section A.6.a. & b. of the Rindge Zoning Ordinance to allow for a twenty-four unit elderly housing development.**

Sitting on this case were Dr. Hill, Mr. Carmichael, Mr. Drouin, Mrs. Breckenridge and Mrs. Goodrich. Goodrich read the case before the Board, Eicher summarized the Ordinance(s).

Keith Thibault spoke representing Southwestern Community Services. He stated he has been working with the town since 1999 to site senior housing here. He stated the intent was to utilize 2.9 acres of a 16 acre town owned parcel between Payson Hill Road and Butterfield Road. He stated the desire of the builders was to be "good neighbors" with regards to wetlands and other considerations. He then turned presentation over to Mr. Pirelli who showed updated plans for the project. Drouin objected to this updated plan, because it did not agree with what was presented to



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the Board. He stated the application required all information to be submitted before the meeting was scheduled.

Carmichael stated his concern regarding salt contamination in the water, and several abutters present expressed their concerns as well. Mr. Thibault stated he planned to create a well that would service municipal needs as well as the development and will be town owned. After further discussion of the quality of the water, he stated that the risk was on the builders and if potable water could not be found, they would not build.

Hill stated it was his understanding that the hearing was for a conceptual approval only, and not approval of the building at this time.

Mr. DuVernay presented a memo, and read from it as follows: "A neighbor had done a great deal of analysis and implores you to consider a great number of issues before granting the Special Exception. I disagree. I believe his concerns are legitimate but are premature. Your chore at this point is quite limited. Your role is to consider only the concept and location. The Planning Board will undertake extensive investigation relative to wetlands, number of units, density and intensity of land use, safety, and public health. The Planning Board will seek testimony by the Conservation Commission, the Fire Department, the Police Department, neighbors, the public, etc, before rendering a final judgment."

Mr. Mellor of the Conservation Commission disagreed and read a memo into the record as follows: "Members of the Conservation Commission have walked the site and find the wetlands delineation from December 2007 as shown on the application map to be inaccurate and incomplete. Further, without this complete and accurate information, any determination of potential impact on surrounding properties and additional future town use by this proposed use would be entirely speculative and inappropriate. We suggest that a comprehensive survey of the entire parcel hydrogeology be required prior to any approval of a Special Exception for such an intensive use. Such a survey should be conducted during favorable seasonal conditions to ensure accuracy, preferably in springtime, but at least without frozen ground or snow cover." He stated that a conceptual plan does not absolve the Board from meeting the criteria of the Special Exception. He stated this development will have a major impact on all 16 acres and that it is incumbent on the town to protect the citizens of Butterfield Road.

At this point an extensive discussion was held regarding the wetlands with abutters disagreeing whether they had been properly delineated.

Selectwoman Barry stated these are multi-million dollar projects that are beautifully designed by high quality people who build with great care with respect to the environment and neighbors. She stated she has toured elderly sites elsewhere and they have only raised the value of the town, and that this development would not negatively impact anyone in Rindge. She urged the Board's approval of the Special Exception so that the builders could move to the next phase.



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Selectman Goodrich stated the town is interested in seeing this project completed and done correctly. He stated his confidence that if the ZBA approved the concept for this location, the other town boards would see that it is done correctly.

Extensive discussion of the wetlands issue continued; Hill asked Thibault what the result would be if the Board should decide it needed better delineation of the wetlands. Thibault replied that it would cause an obvious delay and make funding more difficult. He stated a favorable decision by the ZBA was crucial to proceed to the next level.

It was moved by Carmichael, seconded by Hill to close discussion and move into deliberations and the motion passed unanimously.

Carmichael stated the Board should not pass off any work to other boards. Drouin stated he did not want to deny the special exception and tie the applicant's hands, and that the Board could continue this matter or withdraw it until better information is received.

Breckenridge stated she would be uncomfortable denying the application since the town has a history of voting in favor of elderly housing. She stated she wanted to move quickly but is not prepared to vote on it at this time; she suggested a meeting in December for further discussion.

The Board requested an updated plan showing the locations of the building, parking lot, well and septic be submitted within 10 days of the December 23<sup>rd</sup> meeting, and requested three additional items of information as follows:

1. Up to date details of wetlands delineation.
2. Letters from realtors from towns where other elderly units are located stating there is no negative impact on the value of neighboring properties.
3. Adequate sewer and water supply plan and septic design location and capacity submitted.

Drouin moved, seconded by Breckenridge to continue this application to December 23, 2008 so that the information requested could be provided and the motion passed unanimously.

Drouin and Breckenridge were appointed Reviewers for the month of December.

Drouin stated that he was upset at how Case #995 was handled internally. He stated that since the Chair recused himself he should not have taken a copy of the case, and that the Chair had an unfair advantage over the abutters by taking a copy of the case before it was mailed out by the Clerk. He stated the Chair should not have contacted the Conservation Commission concerning this case and that he should not have contacted the Clerk and instructed her to put a copy in ConCom's file for review. He stated there was no copy of the case in the file for any abutter who wanted to reference it. He stated that nobody should get any copies of cases in the future until the



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Clerk released them. Drouin also requested approved copies of the job descriptions of the Chair and the Clerk.

Breckenridge moved, seconded by Drouin to adjourn at 9:45 pm and the motion passed unanimously.

Respectfully submitted,  
Kathy Strasser, Clerk  
Respectfully submitted

Joseph C. Hill, MD

Chairman

George Carmichael

Vice-Chairman