



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

PUBLIC HEARING MINUTES

January 23, 2007

APPROVED

Regular Members present: Joseph C. Hill, MD – Chair, George Carmichael – Vice-Chair, David Drouin, Marcia Breckenridge. Alternate Members present: William Thomas, Richard Feldman.

Hill opened the Public Hearing at 7:00 PM with the Pledge of Allegiance.

Hill stated, “This public hearing will end at 10:30PM, and if additional time is needed the ZBA will decide at that time when additional time will be scheduled to be fair to both the applicant and the ZBA.”

Hill introduced and welcomed the new Board of Adjustment Secretary – Jody McDermott.

The members and alternates of the board introduced themselves stating their names and status on the Board. Regular Member Harper recused himself from the cases this evening, and Hill appointed Feldman to be a voting member for the cases before the Board this evening.

Breckenridge moved to accept the minutes of January 9, 2007 as written, seconded by Carmichael. Hill asked if there were any corrections to the minutes as written and Drouin suggested that in the future the members should not differentiate between whether they are a member or alternate member of the board. He indicated the alternates were members also and there should be no distinction between the two. The correction to the minutes of January 9, 2007 page one, paragraph four, will delete “and alternates”, thereby reading “The members introduced themselves stating their names and status on the board.” The motion, with this correction, was approved unanimously.

Dr. Hill read aloud the pertinent statutes and ordinances for the cases before the board tonight and stated that they had all been distributed to all the members and alternates. These include: Rindge Zoning Ordinances: Article V: A- 2 and B-3; Article IX : C; Article IV: B-2; and Article XI: B. The Wetlands Ordinance Sections 2: A. , B, and C; and Section 8 . The State statutes RSA 674:16; 674:21 and 674:33. This is not an attempt to influence any vote, but simply to educate.

Hill informed those present of the procedure for the conduct of the hearing as follows:

A: Testimony from applicant

B: Testimony from others in favor of the applicant



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- C: Testimony from others in opposition to the applicant
- D: Rebuttal from the applicant
- E: Rebuttal from those opposed
- F: Motion to close testimony and go to deliberation
- G: Deliberation
- H: Decision

Secretary McDermott stated where the Notice of Public Hearing for these cases had been posted: Town Office, Post Office, Police Station, Transfer Station, the Library and in the Monadnock Ledger.

Hill said that Feldman will summarize the pertaining statutes and ordinances and Thomas will read the applications before the board.

Since both sets of applications before the Board require Special Exception and Area Variances both cases for each applicant will be presented in-toto to save time and to simplify presentations. Each application will be considered by the Board separately.

The Area Variance request made by Timothy Foley will not be heard this evening since an error was made in review of the application. The Rules of Procedure require the Conservation Commission to review any application, for an advisory opinion, if it involves wetlands. Dr. Hill has spoken with Mr. Foley who has agreed to postpone the hearing for this case - # 968 - only, until the Conservation Commission has had an opportunity to review and offer an advisory opinion to the ZBA.

Mr. DuVernay stated that the Conservation Commission planned to address this issue in their Thursday, January 25, 2007 meeting and encouraged those interested to attend at 7:00 PM in the Town Offices.

Case # 965 - David & Linda Olson, Area Variance from Rindge Zoning Ordinance Article V:B-3 to allow the conversion of a single family home in to a multi-family (3 units) at 254 Main Street – Map 27/Lot 35 in the Village District.

Case # 966 - David & Linda Olson, Special Exception from Rindge Zoning Ordinance Section V - Article A:2 to allow the conversion of a single family home in to a multi-family (3 units) at 254 Main Street – Map 27/Lot 35 in the Village District.

Feldman read aloud the statutes pertaining to the cases before the board this evening. **RSA 674:16** – Local Land Use Planning and Regulatory powers deals with the grant of authority by



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the State to the Town of Rindge in terms of its ability to create zoning ordinances determining height, size; **RSA 674:21** regarding Land Use Controls which discusses specifically zoning, impact fees, and the conditions under which the Board should be reviewing variances and special exceptions in terms of the general rule. **RSA 674** deals with the powers that the Zoning Board of Adjustment has in making its determinations and determining the basic requirements.

Rindge Zoning Ordinances: **Article V: A- 2** multi-family usages and its requirements for the site plan; and area; **Article V: B-3** states requirements of frontage, yard, and area requirements for single, two, and multi family dwellings; **Article IX: C** allows a lawful non-conforming use may be altered or expanded by grant of a Special Exception when the proposed alteration meets the requirements imposed by **Article XI-B** and the alteration will not further violate dimensional requirements. **Article IV: B-2** states that no building shall be located closer than 15 feet to an abutters property line or 50 feet from the edge of the right-of-way; **Article XI: B** states the Board of Adjustment shall approve a Special Exception if it finds that the following criteria has been met: the use of the will not create excessive traffic, congestion or noise odors and not reduce the value of surrounding properties has adequate sewage and water facilities and sufficient off-street parking will preserve the attractiveness of the town said use shall be granted. The **Wetlands Ordinance Section 2: A** which regulates the development of buildings and land uses within the wetlands that could contribute to the pollution of the wetlands, **Section 2:B** which prevents the destruction of wetlands, **Section 2:C** which prevents unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities because of improper use of the wetlands; **Section 8** which states Special Exceptions can be granted if it is shown that the proposed use will not conflict with the purpose and intent of the wetland ordinance. The Conservation Commission shall receive notice for any applications for Special Exception and shall render an advisory opinion to the ZBA in such cases. The Rules of Procedure for the Zoning Board of Adjustment require any application for Special Exception or Variance, which involves wetlands to be submitted to the Conservation Commission for an advisory opinion.

Mr. Olson presented testimony to the Board stating that he and his wife have lived in these premises for over 40 years, raising a large family. As the family grew so did the house – they now have a large house and most of the family has grown and gone. At this point in time the Olson’s would like to convert their single family home into three apartment units. Mr. Olson pointed out that the conversion is allowed by Special Exception in the Village District. The land contains an area of 2.3 acres while the ordinance requires 2 acres per dwelling unit for multi-family homes. This is the reason for the request for a Variance since the ordinance requires a minimum of 6 acres for a three unit multi-family dwelling.

The house currently contains six bedrooms and four bathrooms. The bathrooms will not have to be moved in order for each apartment to contain a bathroom and one apartment will contain two. The proposal calls for two 2-bedroom and one 1-bedroom apartment, thereby reducing the



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number of bedrooms from 6 to 5. There will be no exterior work performed to the structure. Cabinets will be added and blocking off doorways. The property contains a well with 300 gallons per minute with a 20 gallon per minute recovery rate. The septic system has operated very well in the past with the number of people utilizing it, so no changes are planned for the septic system. Carmichael asked if the septic system would handle any additional load and Mr. Olson stated that it has handled 6 bedrooms in the past and would now handle the reduced number of five bedrooms. Drouin asked the size of the holding tank. Mr. Olson replied that it was 1,000 – 1,500 gallons. Hill questioned the total number of people that would be housed in the three dwellings. Mr. Olson responded that he anticipated, at full capacity, no more than 10, reduced from 14 when his entire family resided there.

Hill queried as to the number of multi-family homes in the immediate area. Olson replied that there were three – one to the right, one to the left and one across the street. Therefore, this proposal will not negatively impact the surrounding properties.

Drouin asked for the total square footage of living space. Olson indicated that the first floor has 2,064 sq. feet and would contain two 1,000 sq. ft apartments, and the second floor has 900 sq. ft. and would contain one apartment.

Drouin said that since the lot is located in the Village District that Article VI: Section C-3 would apply, not Article V, which relates to the Residential – Agricultural District. The Board and the applicant agreed to the change in request.

DuVernay interjected, explaining that he had probably instructed the applicant to request a Variance to Article V because there is nothing delineated in the Village District ordinance that applies. It says any use is permitted in the Residential or Residential–Agricultural District, with the exception of Mobile Home parks and Mobil Home subdivisions. He referred the applicant to the language in the Residential–Agricultural District Ordinance Article V which allows Special Exception.

Mr. Olson informed the board that the surrounding properties which contained multi-family dwellings also did not contain the 2 acre per dwelling requirement.

Carmichael asked how long the neighboring multi-family homes had existed. “Were they constructed prior to the adoption of the zoning ordinance?” Mr. Olson said that he believed that two had been built within the last five years. He constructed the duplex himself about fifteen years ago.

Drouin again questioned the septic system’s capacity to handle the load with the additional kitchens, with sinks, dishwashers, washing machines, etc. Hill questioned how often the system had to be pumped out. Mr. Olson stated that it is pumped out about every three years. Mr. DuVernay stated that the septic system approval by the State is based upon bedrooms, not



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kitchens. If there was to be one less bedroom then there is no legitimate challenge or issue as to septic load.

Drouin asked the applicant if there was adequate parking for the proposed three units. Mr. Olson stated that there was ample parking with 3 paved spaces in the driveway and 1 paved space down below in front of the garage and 2 others for a total of 6 parking spaces. If additional parking was necessary, 2 more spaces could be placed in front of the shed. Two parking spaces are required per dwelling unit.

There were no further questions from the Board.

There was no one present to speak in favor or against the application.

A Motion was made by Drouin to close the hearing and proceed to deliberations, seconded by Breckenridge. There was no further discussion. The motion passed unanimously.

After deliberation, the Board found in Case # 965:

1: The variance will not be contrary to the public interest because:

There are several multi-family dwellings in the immediate area; there is ample parking so as to not add to the congestion of the area; it is an allowed use within the Village District; so property values would not be lowered. There will be no exterior changes - the building will remain the same.

2: The area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property because:

The area variance is needed because the special conditions of the property are less than the requirement of a minimum of 6 acres.

3: Special conditions do exist such that literal enforcement of the ordinance results in unnecessary hardship because:

The area variance is needed because the special conditions of the property are less than the requirement of a minimum of 6 acres.

4: The benefit sought by the applicant can not be achieved by some other reasonably feasible method because:



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There is no other reasonable alternative which could be achieved because there is no other land to be acquired in order to comply with the zoning requirements.

5: The variance is consistent with the spirit and intent of the Rindge Zoning

Ordinance because:

The exterior of the structure will not be changed. There are other multi-family homes abutting this property. There is no threat to the health and safety of the residents concerning sewage, water, parking, and increased traffic. It preserves the values and charms of the Town consistent with the Master Plan and the growth in the Village District.

6: Substantial justice is done by granting the variance because:

If the variance is denied the applicant will be burdened because other abutters have been allowed to create multi-family homes in the area and the applicant would be denied similar benefits.

7: Granting the variance will not diminish the value of surrounding properties

because:

The applicant has demonstrated that there is ample off-street parking, and no additional negative impact to the area.

A Motion was made by Drouin and seconded by Carmichael to **grant** the Area Variance in Case # 965 from Article VI - Section C 3:c. There was no further discussion. The Motion carried unanimously.

After deliberation, the Board found in Case # 966:

1: The use will not create excessive traffic, congestion, noise, or odors because:

The applicant has provided testimony and provided evidence via the plot plans to demonstrate there is adequate parking, fewer occupants will lessen the traffic, congestion, noise and odors associated with this property. The applicant stated that the number of occupants will decrease from 14 to 10.

2: The proposed use will not reduce the value of surrounding properties because:

The applicant has demonstrated that the abutting properties contain multi-family homes.



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3: There is adequate sewage and water facilities and sufficient off street parking provided by the applicant because:

The applicant has provided testimony that there is adequate sewage and water facilities and sufficient parking.

4. The proposed use will preserve the attractiveness of the Town because:

There will be no exterior or external changes whatsoever. The attractiveness of the Town is preserved.

A Motion was made by Breckenridge seconded by Drouin to **GRANT** the Special Exception in Case # 966 as all four criteria have been met. There was no further discussion. The Motion carried unanimously.

Case # 967: Cedarwood Development Corp.–Timothy Foley, President for Special Exception from Article IX: Section C to allow demolition and reconstruction of a non-conforming dwelling unit on a non-conforming lot.

Location: 56 Red Gate Lane; Map 34/Lot 29

Article IX: C – Nonconforming Uses and Buildings reads: A lawful nonconforming building may be altered or expanded upon the granting of a Special Exception by the BOA when said Board is satisfied that the proposed alteration or expansion meets the requirements imposed by **Article XI-B**, and provided the alteration or expansion will not further violate dimensional requirements.

Mr. Foley presented this application stating that the property contains less than 0.10 acre. The Fire Department wants to burn the structure down as a training exercise and he will replace the structure with a slightly enlarged footprint, in the same existing location, not further violating dimensional setback requirements, which does meet wetlands setback requirements of 50' and add a second story.

Mr. Foley described his justification in answer to the four criteria associated with the granting of a Special Exception:

1: There will be no further traffic impact, congestion, or noise since the building and use will remain the same as is existing at the present time. It is a single family residence and will remain a single family residence. The odors that currently emanate from the house are bad since the former owner kept animals in the house that were not let outside frequently. So the odor will be greatly improved from what exists.



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2: The proposed use will not reduce the value of surrounding properties, rather it will improve the value of the neighborhood. Mr. Foley is building a new home across the street from this property and thereby improving the nature of the neighborhood two-fold.

3: There is an artesian well located on the property and a new septic design has been approved by the State which will be located on site since the existing septic is not adequate and there will be two parking spaces designated on site.

4: The use will improve the attractiveness of the Town. Mr. Foley welcomed a site visit, because the proposed improvements will be more attractive than what exists.

Hill questioned, "The home that is being built on Map 34/Lot 38 - will Mr. Foley be living on this site?" Mr. Foley responded that he did not plan to live on either this site or Map 34/Lot 29, the proposal before the Board this evening.

Hill asked how many bedrooms would be in the dwelling unit for the application being considered this evening. Mr. Foley answered that there would be two in accordance with the septic system approval. Mr. Foley has no concrete plans as to whether he will sell this house, rent this house, or use it as a second home for himself. Hill asked Mr. Foley to consider locating the shed from Map 34/Lot 29 to Map 34/Lot 38, if he had planned to live on this property. Mr. Foley responded that Map 34/Lot 38 was also a very small lot, about the same size as Map 34/Lot 29. There is no extra room on this lot for the shed.

Carmichael asked if the proposed structure on Map 34/Lot 29 was going to be reduced in size from that which exists. Mr. Foley responded that it would not be the case; the hatched lined area on the plot plan was to be an addition. So the footprint would be enlarged, but there would be no further encroachment into the side setbacks.

Carmichael queried whether the existing shed was drawn to scale? Mr. Foley responded that it was. The existing shed is 4' from the water's edge and Case # 968 proposes to relocate it 31.5' from the water's edge.

Drouin asked Mr. Foley about the discrepancy between the septic design plan indicating the shed placement as 3' from the water line and the other plan indicating 4' from the water line. Mr. Foley responded that he took his dimensions from the other plan directly from an unrecorded survey plan prepared by Vorce & Soney that distinguished the pin sets and location of the buildings. Drouin asked for a copy of this plan. Carmichael stated that the issue at hand is that the applicant is not further violating the setback. Drouin agreed saying once the building is removed there would be no footprint left. DuVernay said that it was up to the Building Inspector and himself to ensure that the setback is not further violated. Foley indicated that before the building comes down, control points would be established so that it shows where the structure was. Drouin was content with this information.



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The Board invited members of the public in attendance to come forward and review the plans with regard to this case.

Hill asked if there was anyone in favor of the application who wished to speak.

Mrs. Ann Bennett, abutter – 54 Red Gate Lane - questioned the placement of the proposed septic system and it's proximity to her artesian well. Carmichael stated that it was a state approved design and placement. Bennett responded that neither she nor her husband had been notified about the septic system placement by the State. Foley replied that the State does not typically notify abutters. Her artesian well is located on the septic design plan so it was considered as a part of the relocation of the septic system and is 55' from it. DuVernay stated that the septic system placement does not meet Town standards, but because it was a replacement system approved by the State, he approved it. The Town's standards are 75'. If the septic system was moved 75' in order to comply with Town standards it would be located closer to the water and hydric soils, which would allow the septage to permeate the soils and that would not be allowed by the State. This is the only place to locate the septic system. This is a valid concern, but the new location will make a better situation than what exists.

Drouin stated the square foot of the existing structure is 985 square feet, while the proposed structure is 1931 square feet with two stories so the expansion will be total living space. Foley said that he had interpreted the ordinance to mean that no further expansion meant no further encroachment so he means that the maximum square footage will be the 1931 square feet. The maximum peak height is not to exceed 34 feet. The house across the street may have the view of the water blocked, but this is the house that Foley is building now and it is not even listed, so the new owners will never have a view of the water.

Mr. Ferwerda- 150 Red Gate Lane, here for information only asked how wide Red Gate lane is. No one knew – different maps show different widths, which is common with Private Roads.

Ben Whalen stated, "Since the development of the new house on Map 34/Lot 38 by Mr. Foley, the road conditions have been seriously affected. Many trees were removed and as a result water runs over the Red Gate Lane, a dirt road causing washouts and additional runoff onto the subject parcel." He suggested that there should be no further development on Map 34/Lot 29 because of this. Carmichael stated that this was not the application before the Board and as such is not a consideration for the Board. Hill asked Whalen if he meant that because of the runoff associated with the development across the street, he felt that Foley should demolish the structures at 56 Red Gate Lane and not be allowed to rebuild. Whalen answered "basically". Hill asked how not allowing building at 56 Red Gate Lane would prohibit runoff issues from across the street? Whalen answered that the septic problem would not be an issue. Hill stated this was not the answer to his question. Whalen stated that the runoff had increased last year after the development had begun across the street. Carmichael stated that the suggestion that the septic



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system would be compromised on 56 Red Gate Lane by the additional runoff associated with Map 34/Lot 38 would have been considered by the State in their review before approving the septic system design as to water saturation rate. Whalen said the two are entwined because of same ownership. Carmichael reiterated that the issue before the Board was demolishing the existing structure and rebuilding in kind with no further encroachment into the setbacks. This discussion does not include sheds or the property located across the street. Whalen said he understood. He said his own feeling was that there should not be another house rebuilt on the existing site.

Bruce Bennett, abutter – 54 Red Gate Lane - questioned the septic system asking if there was a leach field or a holding tank? Foley responded that it was a leach field and that because of the confined area this is one of the systems by Harold Davis. “It’s like a very small municipal sewer treatment plant that has 3 stage septic tank and its got blowers and balls that move around and it treats the effluent before it goes into the leach field. The effluent can be taken out before going into the leach field and it is clear. These systems are very popular around lakes.”

There was no rebuttal by Mr. Foley.

Secretary McDermott questioned whether or not Mrs. Bennett was in favor or opposed to the application. Mrs. Bennett indicated she was in favor of the proposal.

Motion was made by Drouin, seconded by Breckenridge, to go into deliberative session. There was no further discussion. The motion was passed unanimously.

After deliberation, the Board found in Case # 967:

1. The Board finds that the use will not create excessive traffic, congestion, noise, or odors because:

It will not negatively impact and in fact will cure existing odor problems. The septic system will be replaced to meet State standards. The proposal will not further violate the existing setbacks. There will be no increased congestion, traffic, or noise as presented by the applicant.

2. The proposed use will not reduce the value of surrounding properties because:

The proposed use will not reduce the value of surrounding properties as the replacement will be an upgrade to the existing conditions.

3: There is adequate sewage and water facilities and sufficient off-street parking provided by the applicant because:



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The applicant has provided evidence that 1: the new State approved septic system is being installed, 2: there is an existing artesian well and 3: sufficient proposed off street parking exists.

4. The proposed use will preserve the attractiveness of the Town because:

This will be an upgrade from the existing structure and because there is an improved septic system being installed, and there is an existing artesian well and sufficient proposed off-street parking.

5. Application satisfies Section 3 under Special Conditions regarding no further dimensional violations.

A Motion was made by Breckenridge, seconded by Carmichael to **GRANT** the Special Exception to Case # 967. There was no further discussion. The motion passed unanimously.

Motion was made by Breckenridge, seconded by Drouin, to adjourn the meeting at 9:05 PM, and the motion passed unanimously.

Jody McDermott
Secretary / Clerk

Respectfully submitted

Joseph C. Hill, MD

Chairman

George Carmichael

Vice-Chairman