



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

October 24, 2006
Hearing Minutes

APPROVED

PRESENT: Regular Members: Joseph C. Hill, MD – Chair, George Carmichael – Vice Chair, David Drouin, William Harper, Marcia Breckenridge; Alternates: William Thomas, Charles Phillips and Janet Goodrich.

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

Hill stated that this Public Hearing will end at 10:30 p.m., if additional time is needed, the ZBA will decide at that time how addition time will be scheduled fairly for both the applicant(s) and the ZBA.

Hill stated that he e-mailed all members and alternates the following pertinent RSAs and Ordinances for the cases before the ZBA: Rindge Zoning Ordinances IX-C, XI-B and IV-B2. This was not an attempt to influence anybody's vote, but simply to educate.

All members introduced themselves and stated whether they were a regular member or an alternate member.

The Secretary stated that the case(s) were posted in the following places: Rindge Town Office, Post Office, Police Station, Ingalls Memorial Library, Transfer Station as well as being published in the Monadnock Ledger/Transcript.

Hill polled all members regular and alternates:

1. Are you unbiased and able to make a determination that is fair to both the applicant and the Town of Rindge? All members replied **"YES"**.
2. Are you familiar with the case(s) before you and have reviewed the information available? All members replied **"YES"**.
3. Is there any reason that you need to be recused from a case before us tonight for any reason (state the reason), including financial interest, family or extended family interests or connections, predeterminations, or as an abutter? All members replied **"NO"**.

Thomas will read the applications and Goodrich will summarize the pertaining Ordinances.

CASE #960: Gwen S. & Charles F. Aquadro, Application for a Special Exception to the Rindge Zoning Ordinance, Article IX, Section C. Requesting to expand a current 8'x6' woodshed attached to the west side of current cottage to be an 8"x12" room (expanded along the side of the current cottage) accessible from inside the house and for use as a spare bedroom. Location 16 Lapham Lane, Rindge, NH – Map 18, Lot 12.

CONTINUED

Sitting Members: Hill, Carmichael, Harper, Drouin and Breckenridge

Hill stated that this is a continuation from our August 22, 2006 meeting. At that time the ZBA had reached a decision and imposed several conditions which included the property being surveyed by a licensed surveyor with the setbacks being shown, and requesting a stamped septic system design certificate. All answers on Form SSB-9 from the State are NO; therefore, the septic system qualifies for repair and replacement under Env-Ws 1003.10. 1003-10, Section B, discusses the replacement of tanks and it does not require NH DES Certification unless the system was changed, and the proposed use was not changed. Thus, the applicants do not need either the Town of Rindge or NH DES approval.

Hill also stated that there is nothing in Rindge's Town Ordinance or in the NH RSA's that Hill could find which requires a new septic system design or certificate if a tank is only replaced without a change in use, and no change is



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proposed. Hill's personal feeling is that this condition which was added is in error and should be voided by vote, as the ZBA is required to interpret statutes and laws and cannot make them. A second concern at the original Hearing was the legal definition of dimensional requirements, which the ZBA stated would be determined by consultation with legal counsel. Dimensional requirements deal with boundary lines that are parallel lines ONLY and NOT area increases. This opinion was given by Attorneys Susan Slack and Paul Sanderson at New Hampshire Municipal Association. The applicants have supplied the ZBA with a new survey with dimensions signed by the surveyor; this survey shows the added area is within lines parallel to the original building site; thus, the concern about legality of the increased dimensions is not pertinent.

Returning to the issue of the ZBA's request for a signed septic system certificate, Harper stated that he does not agree with getting rid of the signed certificate from the designer. The reason Harper disagrees is that he feels there is 100% increase in septic use. Harper understands that the replacement tank does not require the statement to be filled out, but the designer should sign it. Harper noticed the statement the Board has is not signed. The reason for the request from the licensed septic designer is to make sure that a one bedroom house and septic use is not the same as a two bedroom house and septic use. Harper believes that the addition of the new bedroom is a 100% increase in usage, and Harper wants to make sure that on the certificate someone with expertise can certify the system is capable of handling a 100% increase. Harper stated he knew Jason Gorman did the work, and Jason had been amazed how clean the pipes were. There can be a couple reasons for that; one is that the system is not being used; the other is that someone forgot to put a pipe in the septic tank so nothing ever went down those pipes. Harper stated that in an area that is full of gravel it is very possible that the pipes never got loaded. The reason for Harper's request was to make certain the septic system would handle the new bedroom with its increased occupancy and septic use.

Charles Aquadro, the owner, gave testimony. He appreciated the concern of Harper as he and his wife were also concerned, and want the septic system to be adequate and to code. Aquadro explained that when he purchased the house the living room was used as a bedroom by virtue of having a trundle bed in the same room as the living area. When Paul Swingle did his site assessment for a purchase, he actually did the site assessment based on a two bedroom seasonal house. Swingle was counting the proposed new bedroom as one of those two bedrooms and counting the trundle bed arrangement in the living area as constituting the other bedroom.

Aquadro stated that the house has always been a seasonal place, and there is no intent on that being changed. The only intent and purpose is to add this room so when the children or guests come, they have a private room for sleeping. There is no intended increase in the occupancy over what has been used with the current septic system.

Aquadro also stated, "Whether the system could have never functioned to begin with, I cannot say anything about that except for what Jason Gorman told me." When the system was pumped, there seemed to be something in it and so it apparently was not draining through the bottom, and at the same time, the amount of use and contained matter was relatively small because the cottage is only used a couple of weekends or a month each year. Aquadro also said he had spoken with two other septic designers, and they both commented that there was a good ridge or gravel bed as part of the current system.

Hill stated, "I understand basically the only change would be the addition of this other room, but the actual occupancy will not change."

Aquadro responded that the children are away at college so there will be no dramatic change. Over the years the house has been a place where the parents and children would come when there was time, and the intent is for it to remain a seasonal cottage.

Carmichael stated that he was looking at the DES letter and asked Harper if the letter answered Harper's question. Harper replied, "No, it does not as this has only been a one bedroom house and we are going to give him permission,



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if we grant this, to make it a two bedroom house.” Harper stated that it was only a one bedroom house when the report was made, and the one simple solution to this would be to have Paul Swingle say one bedroom is as good as two bedrooms in regards to septic system capacity.

Carmichael feels that the ZBA might be setting a precedent here by asking more of these applicants than it normally would of any other applicant. For example when the ZBA asked the Aquadros for a re-survey showing the lot lines, the ZBA also asked them for proof the system will hold two bedrooms. All the ZBA needs to know is that the system is adequate, and the signed letter shows that. Carmichael feels there is enough evidence presented to show the current septic system is adequate to continue using it at the current level of use.

Harper stated, “Before, it was a one bedroom home and now they want to make it a two bedroom home. Harper also stated, “If you had a three bedroom home and a three bedroom septic system, you would have to add on to your septic system to make it a four bedroom septic system if you added onto your house.” Harper stated that it is simple; he is not asking for the moon. He also said going from a three to a four bedroom is an increase of 45%; this addition is a 100 % increase from one to two bedrooms.

Breckenridge stated that the important word for her is “seasonal.”

Harper said, “It is seasonal but that septic system is going to go with that property. If these owners decide to retire, and make Rindge their year round home like a lot of people around lakes do, the owners have a two bedroom septic system that was installed and built as a one bedroom septic system, and the ZBA is saying this is acceptable. Harper feels it is not acceptable to double the use. No matter what the owner says or how many people slept on the living room floor, the house has a one bedroom septic system, and they want to make it a two bedroom house. They are adding a second bedroom.”

Breckenridge said it is a 1,000 gallon tank and Harper stated it is acceptable for a one bedroom septic system. Breckenridge asked what size tank would they need for two bedrooms. Harper replied maybe they need a 1,250 or a 1,500 gallon tank.

Carmichael sees it as DES calling it a two bedroom house. Harper replied saying that Paul Swingle wrote those words; they did not come from the State. Carmichael again stated Paul Swingle wrote them. Harper replied, “Yes, but this is not a State form; this was done by Paul Swingle. It was not submitted to the State; it was submitted to the Town.” Harper stated all the ZBA needs to do is have Paul Swingle say the septic system can handle one bedroom to two bedrooms. Harper wants to get this straight because sooner or later that house is going to get torn down and will end up being a year round house.

Breckenridge asked Aquadro if he asked what size tank was needed. Aquadro replied that he was asked what he was using it for, and Aquadro told Swingle that the house was seasonal property. Swingle told Aquadro to put in a 1,000 tank. Aquadro did not specifically say the number of people who currently used the septic system.

Drouin said, “Let’s not confuse the expertise of an installer with the expertise of a designer.”

Carmichael asked if Swingle were an installer or a designer, and Harper replied that he was both a designer and installer. Carmichael said, “Either he made a typographical error by saying two bedrooms, or he in fact knew that this system could handle two bedrooms.”

Aquadro said he had never seen that form until it was handed to him when he purchased the property. He spoke with Dick Seed and was told that it was possible there could be no plan on file since the cottage was built in 1961, and the state didn’t begin certifying cases until 1967. He also stated that the State does not certify systems that are



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in the ground. The best that could be done is to have a site assessment that would give some sense of whether the current system is working properly. Aquadro also stated that Jason Gorman had replaced the tank.

Aquadro stated that there is no way to fully satisfy a ZBA request to check the working of the current system because a system that is in the ground can only be assessed on what can be seen and whether it shows any evidence of failure. The only thing that the owners or State could do now would be to have a septic design done.

Harper stated, "All the ZBA wanted in the last meeting was to have a simple letter from Swingle saying that the system is ok to go from one bedroom which it is, to having a second bedroom. With a simple letter from Swingle you can make this go away. The entire letter needs to say that the system that is there now is capable of expanding from one to two bedrooms; that is all I want that letter to say."

Breckenridge stated that she has the Notice of Decision that says when the owner returned to the ZBA for a continuation, the owner should return with a stamped septic system design certificate. From what Breckenridge sees, the ZBA now has that.

Harper stated that the date of the certificate is 1/13/05. Carmichael said it was available to the ZBA on August 22, 2006. Harper said all he wants is something that is up to date stating that the property can go from one to two bedrooms. Since Swingle is familiar with the property, he will probably not have to go out there.

Breckenridge said the signed letter already says a two bedroom seasonal house, and Swingle approved it. She cannot argue with that and Carmichael agreed that the letter does say two bedrooms. Harper stated that he does not agree with that because that house which was being sold on 1/13/05 was for transfer of real estate and now the owners are going to add a bedroom onto it. "So was it two bedrooms before and now it is going to be a three bedroom, or perhaps it was a one bedroom before and now it is going to be a two bedroom." Breckenridge again pointed out that Swingle's comment says two bedrooms. Harper replied by saying he, Harper, is talking about existing conditions, and now the owners are going to add one more bedroom.

Carmichael asked Aquadro if the conditions are one bedroom or two right now. Aquadro replied by saying right now the house has a small bathroom and one single bedroom in it. There is a trundle bed in the so called living room. Breckenridge asked if there is one bedroom now and Aquadro replied, "It will have one separate bedroom if this case is approved."

Drouin asked if this was going to become a three bedroom home now and was told that it was going to be a two bedroom home.

DuVernay stated that he talked to Swingle who indicated that it was impossible to determine the capability of an existing system in the ground. DuVernay said, "If this house is converted from seasonal to year round, the RSA requires that a septic design be adopted for the usage anticipated on a year round basis."

Carmichael said, "If I am hearing you correctly, you are saying that in order for the Aquadros to get a certification stating that this system is capable of handling or supporting a two bedroom home, they would have to destroy it." DuVernay replied, "Right." Carmichael stated that he does not feel that asking the owners to have an existing system destroyed is a fair request. Harper replied that information saying an existing system must be destroyed to test its capacity is not true. DuVernay then commented that the tanks are designed for two bedrooms and that they are not designed for just a single bedroom house. Drouin asked how they would figure loading capacity. Swingle must have had something to work with. The loading capacity is 905 gallons per day so how did Swingle figure that?

Drouin stated that 18 months ago this house had two bedrooms according to the designer who stamped the form and put his name on it. Carmichael said, "Let's drop that document for the moment and key in on what DuVernay was



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told by a licensed designer and installer. The designer and installer told the Code Enforcement Officer that he would have to destroy this system in order to prove what the ZBA is looking for.” Carmichael said, “I think that is asking too much.”

DuVernay stated from what he was able to determine from the smell, and the ground around the system, there was no leakage. Drouin stated that in January on a seasonal home; that was suspect. Carmichael added if the Aquadros were ever to convert this seasonal house to a year round home, legally they would have to go through this process because DuVernay stated they would need a certified designer to design a system to handle a year round home.

Aquadro stated that he understands that if anything is done in the future to the property a new septic system would have to be designed.

Carmichael, speaking for himself, feels that the ZBA has the septic system issue taken care of and also has the setbacks pretty well described. Drouin asked, “Has Carmichael set aside his concerns about the disagreement between the documents?” Drouin asked Carmichael, “Are they really asking for a third bedroom?” Carmichael replied by saying their application clearly states to add a second bedroom. Drouin said the ZBA has a stamped septic design that says it is already capable of handling a two bedroom house. The designer does say it is a two bedroom seasonal and that is what he wrote and stamped.

Carmichael reminded the Board that the ZBA already filled out its decision tree on this case on August 22, 2006, and he doesn't think any of the five criteria were rejected. Drouin stated that the ZBA also had three conditions that it wanted answered.

Aquadro said they are just moving the beds in the living room to a separate room. There is no attempt to increase the usage.

Hill stated that the Board will go into deliberation.

Hill read the Decision Tree that was approved 4-1 with Harper opposed at the August 22, 2006 meeting.

Hill stated the ZBA had imposed the following:

1. The stamped septic certificate.
2. The setback of the present building should be surveyed and dimensioned by a licensed surveyor. The owners have had that done.
3. The ZBA obtain the legal definition of dimensional requirements. This has been done, and it is not area, it is parallel lines.

Drouin said when the ZBA asks for legal opinion shouldn't the ZBA get something on the attorney's letterhead so the ZBA can put that in a file so at a later date it is a part of ZBA records. Hill said that could be done in the future. Hill said that both Attorneys Slack and Sanderson stated that dimensional requirements are based on only parallel lines, not area.

Hill said the owners have supplied the survey; and the only question that comes up is the stamped septic system certificate, and the State says they cannot supply it. Harper said all he wants is for Swingle to do another site assessment that says it is ok to increase the use from one bedroom to two.

Carmichael didn't think the ZBA needed a certified survey. Drouin said the ZBA has been burned on two other properties and agrees that another site assessment is expensive but thinks it protects the home owner, abutter and the Town just for that reason. Carmichael replied, “We have a scaled drawing from a certified surveyor and it shows the property inside the boundary. We have a licensed designer/installer calling this a two bedroom home and the applicants are saying that it is a single bedroom home; yes it has been used for a two bedroom, and this may have



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been the reason why this particular individual was confused. All they are doing is moving the bed in the living room and putting it into a formal bedroom.”

Hill stated that Aquadro is not increasing the load on the system.

Drouin does not think the ZBA can pick and chose. “You cannot test the system without damaging it, and the system was ok for a two bedroom when in January of 2005 it was termed a two bedroom house, and now we are adding a bedroom - two and one is three. Carmichael stated that the Aquadros are making a room in which to move the trundle bed that is currently in the living room. Hill said they are only moving the bed from one place to another. Harper said in the septic world he doesn’t care where you put the bedroom. He doesn’t care if you put it on the roof - you are adding a bedroom, and in the septic world it is not like moving a piece of furniture. Drouin does not think it helped the applicant one bit by calling this a two bedroom seasonal home in 2005. Drouin stated that the document that is stamped says it is an existing two bedroom and their application says they are adding a bedroom.

Carmichael stated that they are moving the bed to the woodshed, and they need a Special Exception to do that and that is why they are here.

Drouin hopes that the issue of the number of bedrooms does not come back to burn us on the septic issue. He doesn’t feel the owners are going to change the use at all and trusts that they do not want a leaking septic system. The ZBA does not know if it is a two bedroom system and the same designer already called it a two bedroom house and the ZBA is now adding another bedroom and the documents do not line up. That is what concerns Drouin. In Harper’s opinion approving the existing paperwork is sloppy work. Drouin doesn’t feel that the designer helped the owners one bit, and Harper replied by saying that is why towns get sued.

Carmichael stated that the Aquadros are turning the house into a two bedroom home, but the owners are only taking the bed from the living room to a formal bedroom. Drouin doesn’t doubt that at all, and what does the ZBA say, “Don’t put a pull out couch in their living room ever again; it just doesn’t add up.” Carmichael said what doesn’t add up is that back in January someone said this is a two bedroom home. The reason being because the owners had a bed in the living room. Drouin said, “If it is a seasonal home and they shut the water off October 15th and it is now January 15th 05, anything is going to look good; you cannot tell where the wetlands are in January.”

In Case #960 for a Special Exception, a motion was made by Carmichael and seconded by Breckenridge that the ZBA approve a Special Exception request to expand the current 8’x 6’ woodshed to 8’x’12’ and to rescind this Board’s previous requirement made on August 22, 2006 requesting the applicants to obtain a new septic system design and stamped certificate for their system.

The motion carried 3-2 **In favor:** Hill, Carmichael, Breckenridge

Opposed: Harper & Drouin

CASE: #963: Arthur J. Martin Jr., Application for a Variance to Rindge Zoning Ordinance, Article IV, Section B,2. No building shall be located less than 15’ from the lot line. Location 210 Fourth Street, Rindge, NH – Map 15, Lot 33.

Sitting Members: Hill, Carmichael, Harper, Drouin and Breckenridge

Before Arthur Martin gave testimony Hill read the following questions for Martin to address in his testimony.

1. When was the shed erected?
2. Looking at the supplied pictures it would appear that the shed sits on cinder blocks, is this correct? Is there a second foundation under the cinder blocks?
3. At the time the shed was erected, were you familiar with lot line restrictions and if not, why not?



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4. How did the Code Enforcement Officer become involved with this violation? Did any of the abutters raise any objections to the current violation?
5. According to the measurements supplied by you the shed measures 18'x14'. Could it be possible, without undo financial hardship to move it either to the other side of your house without running the risk to the leach field or toward the rear of the house nearer the lake for more conforming to the ordinance?

Harper asked Hill if the applicant received a copy of those questions prior to this meeting and Hill replied, "No". Harper asked if Martin could get a copy of them now and Hill replied, "Sure, it is my only copy but he can have it, and we can make a copy available to him." Harper said, "It is only fair. You read off a list of things that he did not know before this meeting." Martin was given a copy.

Martin gave testimony and stated that the shed does not sit on cinder blocks; it sits on little blocks at each corner; he is not sure what you call them, but they can be purchased at Wal-Mart. Hill stated that it looked like cinder blocks to him from looking at the pictures. Martin said he can't move the shed to the other side because there is a hill that goes down there, so there is no possible way that it can be moved to the other side. Martin stated that he has about ¼ + acres that the shed sits on. When he put the shed up, he did not know that sheds without foundations required a permit. It would be a hardship to move it because the well is not far from the shed, and it would be in front of the kitchen window.

Carmichael asked why it couldn't be moved to the 24' side, and Martin replied, "Because that is where the hill is." Hill asked, "What about moving it to the back side of the house towards the lake?" Hill asked, "From the house to the lake, is it a significant slope?" Martin replied, "Yes." Hill asked, "From the house to the other side of your property from where the shed is, is that also a slope?" Martin replied, "It is hill all the way across."

Drouin stated that he was out there looking at the property and knows that Fourth Street is quite a bit higher than the lake. Drouin also stated that the shed looks very nice, and it is very well done.

Martin said he has signatures from abutters Robert B. Wernecke and Sheila A. Sbrogna, and they see no reason why Martin should be required to move his shed.

Hill asked DuVernay how he got involved with this and DuVernay replied that he had been in the area visiting properties, and Mr. Wernecke and it was very obvious that it was too close to the property line. Hill said then it was not due to a complaint, and DuVernay stated no.

Martin answered questions from the Board Members by showing issues on a map.

Martin said he keeps up his property and Drouin & Carmichael stated that it shows that it is well kept. Martin stated that he uses the shed to store his lawnmower, rakes, snow blower, shovels etc.

Carmichael asked what DuVernay's take was on this as far as the looks and the way it sits into the property. DuVernay does not feel that any of this is relevant. DuVernay stated, "The fact of the matter is that this house has been there for awhile, and it will remain for awhile. DuVernay said that the Town provides or requires setbacks to protect neighbors. The whole idea of setbacks is to protect neighbors from neighbors and protect the appearance of the neighborhood." He stated, "It is a very nice looking shed, but it is 3' from the property line, and that is illegal. Whether Martin is aware of the Zoning Ordinances or other things, he is required by law to be responsible to obey the Ordinance. He built the shed without a building permit; therefore, he didn't have the benefit of the advice I would have given him as to where he could have put it, and it is unfortunate that it will cost him money to move it."



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Hill stated, "He could move it farther away from the property line. It would be closer to the well but according to Martin's wife's measurements you have 17' between the well and the shed." Martin asked, "Right now?" Hill replied, "That is correct." "The shed is 8' x 14'?" Martin said, "Yes".

Carmichael said he is also looking at what Harper brought up and that it looks like you would have to encroach into your parking lot to put it there.

Harper asked Martin if he had built the shed himself or bought a kit. Martin replied that it was a kit.

DuVernay asked why he couldn't put a lean-to on the side of the house, Drouin said on the 16 1/2' dimension. It would have to be 1 1/2' lean-to on that one side. DuVernay said it would be illegal but less of an infringement.

Carmichael suggested that maybe a site walk is in order because it is difficult to see this and the drawing is not to scale and based on the fact that there is a lot of steep slope there it is difficult to really see what the hardship is here. Carmichael feels it would be to the land owner's advantage to at least have the ZBA look at what is really there. Martin said all are welcome to come anytime and see what his situation is.

Harper made a motion seconded by Carmichael to continue this hearing to this coming Friday October 27, 2006 to meet at 4:15p.m. at the "North of the Border" and proceed to Martin's property Case #963. The motion carried unanimously.

Hill said the ZBA also needs to decide when the ZBA will make the final decision on this case. Drouin said maybe we can or cannot make it the day of the site walk, but he thinks the ZBA should make an effort to make the decision Friday night.

Carmichael said that the ZBA members should bring decision tree sheets on Friday.

Hill stated that he wanted to discuss how to distribute materials to Board Members. Carmichael & Harper stated that they both would like everything sent by U.S. Mail. Harper does not want to count on e-mails or anything else. Carmichael said that is one of the reasons the ZBA bumped up the application fee.

After a brief discussion the members decided that all materials be sent to members by U.S. Mail.

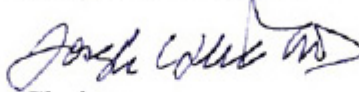
After a lengthy discussion, Hill stated that in the future all names as to who was in favor/opposed to a case will be put on the Decision Notice unless the vote is unanimous.

After discussion on the minutes of September 26, 2006, the secretary was asked to check the tape for other information before approving these minutes.

The Hearing adjourned at 9:00 p.m.

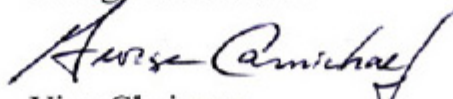
Respectfully submitted

Joseph C. Hill, MD



Chairman

George Carmichael



Vice-Chairman