



## 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

**APPROVED**

### Public Hearing Minutes 11-28-2006

**Present were: Joseph C. Hill, MD – Chair, George Carmichael – vice Chair, Janet Goodrich, David Drouin, Bill Harper, Marcia Breckenridge.**

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

Hill stated that this Public Hearing will end at 10:30 PM, 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 advised that the pertinent RSAs and Ordinances for the case before the board tonight had been e-mailed to all members and alternates. They include: Rindge Zoning Ordinances IV-B and XVI – 13.

All members of the Board introduced themselves and stated their status on the board.

The secretary/clerk stated that the case was posted at the following places: Rindge Town Office, Post Office, Police Department, Transfer Station, Library and Town Web Site.

All members were polled for the following questions:

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 before this Board, and have reviewed the available information? All members replied **“YES”**.
3. Is there any reason that you need to be recused from the case before this Board 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”**.

Goodrich read the application that was before the board.

Hill summarized the pertaining ordinances.

CASE #964: Jeffrey W. & Elizabeth R. Brown, Application for an Area Variance to Rindge Zoning Ordinance, Article IV, Section B (frontage). Requesting the creation of an approximately 7 acre non-conforming lot, due to less than 250' of frontage. Location 199 Woodbound Road, Rindge, NH – Map 46, Lot 37.

Mr. Brown presented his case by reading from his application, and stated that granting the area variance would not diminish the surrounding properties' values. Brown had a letter from Mark Tieger of Tieger Realty dated September 7, 2006, which stated that there would be no diminution



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of the value of the surrounding property values. Brown stated that he wanted to sell some of his land for some time, but due to activity to the east of his property he thought that he should hold off.

Carmichael said Brown that he, Brown, had mentioned Vorce and Soney; the Board is familiar in dealing with them, and typically the Board receives a different plan format from them and the plans are usually signed. Carmichael stated that it is not required that the plans be stamped, but what caught his eye was the fact that the details in Brown's plan are different from the plan that the Town of Rindge has. The delineation that Brown has for the shoreline protection act 250' from the lake differs from the Town maps showing the lake going about ¼ of the way into the property.

Brown stated that in 2000 Tieger compiled a map showing the boundaries, showing who was next door. Then Brown and Tieger went back in and did notes on the map.

Carmichael wanted to know why the difference, and Brown stated, "That portion of the map was not touched for this project."

Harper asked why the plan was not stamped. Brown stated that this plan was a compilation of other information.

Abutting neighbors came forward to show where their houses were in relation to Mr. Brown's property.

Scott Senechel asked if the Board had received his letter dated November 9<sup>th</sup>. Hill stated, "Yes, it was put into the record."

Clark Foreid came forward stating that he has several issues, not so much with separating the lots, but where Brown is going to place the house or where the house can go. Another issue is a selfish issue and that is Foreid's privacy. Foreid stated that he would lose a lot of privacy and so will Mr. Senechel. Foreid stated that his reasoning for buying his house was for the privacy. Another issue is environmental; there are a lot of wetlands on the property. Another issue is wildlife which comes to that area. Foreid stated that if Brown put a second house on that land, that the value of Foreid's property would go down, because the privacy won't be there. The whole reason why Foreid is living out there is because he has the privacy.

Seneschal stated that his concerns have to deal with the wetlands.

DuVernay stated that he has two issues; first he does not see any hardship with this lot. Brown owns an oversized lot; Rindge has several oversized lots in town. There is a zoning ordinance that requires 250' of frontage and Brown has owned this property for 25 years. When Brown bought the property, it had 416' of frontage; he put one house on it and that is all he is entitled to



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put on it. DuVernay questioned if the *NH Supreme Court decision in Garrison vs. Henniker*, which attempts to define what the term unique means to property had been considered by the Board? DuVernay stated that he does not see that there is anything unique about this property, and Mr. Brown has not explained what his hardship is. He just doesn't have 500' of frontage, which he needs in order to subdivide this lot.

Hill asked for any other comments or rebuttals.

Brown stated that it was suggested that he get some frontage from his neighbor, but he doesn't have two acres, so he can't do that and the frontage on the other side had already been worked out. Brown responded to Mr. Foreid's point that he (Mr. Brown) could tear the current house down and build another house anywhere else on the lot. The hardship Brown stated is that he has a big lot and is not able to derive enough value out of it as currently configured; it seems to him that there could be two houses on the property if it were subdivided.

DuVernay advised that Mr. Brown's statement that he could clear cut the lot is obviously erroneous, because there are wetlands throughout that whole property and there would be significant restrictions on placement of a building; in addition, Brown's comment has nothing to do with the current issue." Hill also stated that there would be significant restrictions as to where a house could be placed.

A Motion to close the public section of the hearing and move to deliberation was made by Bill Harper, and seconded by George Carmichael. The motion carried unanimously.

Decision tree.

1. The variance **will** be contrary to the public interest because evidence presented by the abutters' objections that they had purchased abutting land with the safe assumption that Brown's lot would be a single lot, and adding additional housing goes against the spirit and intent of the zoning ordinance.
2. Special conditions **do not** exist such that literal enforcement of the ordinance results in unnecessary hardship.
  - a. The area variance **is not** needed to enable the applicant's proposed use of the property given the special conditions of the property. Special conditions on this property do not exist as the property is already used for a single family home. An area variance is not needed because the homeowner has received all the benefits of property ownership.
  - b. The benefit sought by the applicant **can** be achieved by some other reasonably feasible method such as installation of a town-approved road with and subdivision approval.



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3. The variance **is not** consistent with the spirit and intent of the Rindge Zoning Ordinance because the intent of the zoning ordinance is to prohibit subdivisions of land with substandard frontage.
4. Substantial justice **is not** done by granting the variance. If the variance is denied, the applicant will not be burdened because the applicant has full and effective use of the property, and there **is** significant benefit to the Town in denying the variance.
5. Granting the variance **will** diminish the value of surrounding properties because the word value is not limited to assessed value and because the evidence presented by the two most affected abutters concerning the loss of privacy is consistent with potential diminished value of surrounding properties.

A Motion was made by Carmichael, and seconded by Harper to deny in case #964, the application for area variance, based on the fact that none of the five criteria were met. The motion carried unanimously.

Approval of minutes for October 24, 2006. Motion made by Breckenridge to approve the minutes, and seconded by Carmichael. The motion carried unanimously.

Approval of minutes for October 31, 2006. Breckenridge had grammar corrections to these minutes. Motion made by Drouin, seconded by Harper, to approve the minutes as amended. The motion carried unanimously.

Hill stated that the next meeting is scheduled for December 26<sup>th</sup>. The only application potential is Jason Czekalski. The Board decided that there would not be a quorum on December 26<sup>th</sup> and will move the meeting to January 9<sup>th</sup>. Any written material should be submitted by December 15<sup>th</sup>. Hill will talk with Attorney Beth Fernald and have her write a letter to Mr. Czekalski about the decision to move the meeting. In addition, the Board will hear Case #911 and #936 only, the Board will need eleven copies of everything ahead of time as per the Rules of Procedure, and that the ZBA will follow the normal rules of procedure.

Hill asked if there was any other business to come before the Board? Carmichael suggested not to re-record the decision in front of the general public. Harper stated that if the recorder is not good enough then the ZBA should buy a better recorder, preferably a digital recorder. Carmichael made a motion to buy a digital recorder, seconded by Harper. The motion carried unanimously.

There was discussion as to whether or not the tapes can be destroyed after the minutes have been approved. It was decided that if the Board does decide to destroy them that this destruction be documented in the Rules of Procedure.



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Carmichael stated that he is against the polling of the members at the beginning of the meeting. He thinks that these are all questions that shouldn't be asked. If a member needs to recuse, then that member should do so at the beginning of the meeting. He thinks that going through these questions is a mute point. Harper stated it is part of the oath of office. Hill said he had included the public questions and responses to obviate any potential problem. Drouin stated that if he is going to recuse himself he is not going to give a reason. Hill stated that he had asked Attorney Paul Sanderson at the NHMA about the three questions on April 2006, and Sanderson had said that the board is much safer if the questions are publicly asked. The Board decided that the only question to be asked should be "Will anyone recuse themselves from any case heard tonight?"

A Motion to adjourn was made by Breckenridge and seconded by Carmichael. The Motion carried unanimously.

Meeting adjourned at 9:00 p.m.

Respectfully submitted

Joseph C. Hill, MD

Chairman

George Carmichael

Vice-Chairman

Julie Labonte  
Interim Secretary / Clerk