



## 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 PUBLIC HEARING MINUTES NOVEMBER 27, 2007

**APPROVED**

**Regular Members Present:** Chairman Joseph C. Hill, David Drouin, Marcia Breckenridge, and Janet Goodrich.

**Alternate Members present:** William Thomas.

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

Chairman Hill stated the Hearing will end at 10:30 pm, and if additional time is needed, that will be scheduled at a special session to be fair to both the Applicant and the ZBA.

The members and alternates introduced themselves and announced their status on the Board. Chairman Hill stated that Mr. Carmichael, Mr. Feldman and Mr. Phillips are excused for tonight.

Chairman Hill asked if there would be any recusals for this evening's cases. There were none. He then explained the Rules of Procedure for the hearing to all those present. He stated that as Mr. Carmichael is not in attendance tonight he is appointing Mr. Thomas as a fifth voting member.

Chairman Hill stated that as the December session of the ZBA falls on December 25, he would like to introduce a motion that instead of a meeting in December, the next regular session shall be on January 22, 2008, with the closing date to be January 2, 2008, January 1 being a holiday. If a special session is absolutely needed, this shall be January 10, 2008 with a closing date of December 20, 2007. Motion is seconded by Ms. Breckenridge. Discussion is held regarding holidays affecting filing deadlines. After discussion, the motion passed unanimously.

Chairman Hill moved to reelect Mr. Thomas as acting vice chair for this meeting, seconded by Ms. Breckenridge. The motion passed unanimously.

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

#### **Approval of Minutes of October 23, 2007**

Various members of the Board submitted corrections and changes to the Minutes of October 23, 2007. It was moved by Mr. Drouin, seconded by Mr. Thomas to approve the Minutes of the October 23, 2007 Public Hearing as amended. The motion passed unanimously.



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Chairman Hill stated that Case # 975: Daniel & Ardelle Aho, Trustees of 262 Monomonac Road, Rindge, NH 03461 Map 18/Lot 14 regarding a request for an Appeal from an Administrative Decision made on July 25, 2007 by the Selectmen relating to the Rindge Wetland Conservation District Ordinance, Sections 9 A & D: Paragraphs 5-7 regarding the Tree Cutting Policy, Wetland's Restoration and fines has been settled by the Board of Selectmen and withdrawn.

**Case # 979: Lyle Stenersen, 49 School Street, Rindge NH 03461, Map 29/Lot 5: Application for an Area Variance from Article I, Section 13 of the Rindge Zoning Ordinance – Accessory Dwelling Unit.**

Chairman Hill read Case #979 before the Board. Mr. Thomas summarized the Ordinance(s).

Chairman Hill read a letter from Town Counsel Beth Fernald regarding limiting a variance to present occupants and whether this variance, if granted, would set a precedent for other non-attached accessory-dwelling units (ADUs). Mr. Drouin moved to reopen Case #979, Ms. Breckenridge seconded, and the motion passed unanimously.

Mr. Kirk Stenersen submitted copies of a letter from his attorney, James M. Callahan to the Board and read it into the record as follows:

“I've taken a look at these questions and note the following:

1. New Hampshire RSA 674:33 II has been interpreted in such a way as to allow the ZBA to attach reasonable conditions to the granting of a variance. Conditions placed upon variances will generally be upheld unless that are beyond board authority, outside of the law, or simply unreasonable (cited in the case of Vlahos Realty Co. v. Little Boar's Head District, 101 N.H. 460 (1957)). If the applicant is willing to agree to limit the use to the present property owner, attaching this limitation as a condition to the approval would be reasonable.
2. I believe that each variance is reviewed and either granted or denied on its own merits.”

Chairman Hill asked if there is further testimony in this matter. Mr. Stenersen referred to pictures submitted as part of the application and stated his reasons again for requesting a detached unit as opposed to attached. Discussion was held among the Board and Mr. Stenersen regarding which side of the house would be most reasonable to construct the unit, the problem of access for elderly parents, the septic system, and the how the house would look from the road with a large addition. Mr. Hill asked what the cost difference would be for an addition as opposed to a detached unit. Mr. Stenersen stated the cost to add onto the current structure would be considerably more.

Ms. Breckenridge stated she supports the concept of providing housing for one's elderly parents, but expressed her concern that granting this variance will set a precedent. She stated she would like to find a way to make this work. Dr. Hill stated there is no way to limit a variance to the



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present owners and grandparents, as Ms. Fernald states any variance goes with the land forever, and not with the owners. He stated the town ordinance is written only for attached accessory dwelling units.

Mr. Thomas stated the spirit and intent of the zoning ordinance is to allow one dwelling per lot only. He asked if the cost of building an attached unit constitutes hardship or not. Mr. Stenersen stated the hardship has to do with the lot and how the unit would have to be attached to the existing structure.

Mr. Drouin stated that any future owners of the property would be able to rent the unit to non-family members and asked if we can limit the variance so that only family members can live in the unit. Dr. Hill stated that since the variance goes with the land, the Board could not do that. Ms. Breckenridge stated she doesn't think the Board has the right to do that, since it would be changing what the public voted on.

Mr. Luke Ciarfella stated he lives next door to the right of the Stenersen's property. He stated that while he sympathizes with the family, he has concerns about the new septic system that would have to be constructed being too close to his property line. He asked whether they could construct the unit near the garage, since the proposed site would block his current view.

Extensive discussion was held regarding housing in the village district, whether there has to be one contiguous wall to be considered an ADU, whether a breezeway would fulfill the requirement of a common wall, and interior access vs. contiguous walls.

Chairman Hill asked if there was any other testimony. Mr. Drouin asked Mr. Stenersen to sum up the hardship. Mr. Stenersen stated he believes each case should be evaluated on its own merits, that he is trying to accommodate single floor living for elderly parents, that there is an access problem if the unit were attached to the present dwelling, and that the cost would be considerably more for attached vs. detached.

Chairman Hill asked for a motion to end discussion and go into deliberation. Mr. Drouin moved, seconded by Ms. Breckenridge, and motion passed unanimously.

Ms. Breckenridge asked whether conditions will apply to granting of the variance, and if so, should those conditions be discussed before deliberating the questions. Discussion was held. Ms. Goodrich stated any conditions for the variance would have to apply to the property, not the parties applying for the variance. Various members of the Board expressed concerns about the need to provide housing for the elderly versus going against the will of the people.



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The Board found that:

**1: The Variance will be contrary to the public interest because:**

It goes against the purpose of what was adopted by the Town in 2006 concerning single family dwellings.

**In favor:** Breckenridge, Goodrich, Thomas, Hill

**Opposed:** Drouin

**2:a: The Area Variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The special conditions of the property are:**

Grade change on the right hand side limits access, split level construction on Left side eliminates single floor living.

**In favor:** unanimous.

**b: The benefit sought by the applicant can be achieved by some other reasonably feasible method because:**

An attached ADU can be constructed to provide housing for elderly parents

**In favor:** Breckenridge, Goodrich, Thomas, Hill

**Opposed:** Drouin

**Special conditions do not exist such that literal enforcement of the ordinance results in unnecessary hardship because:**

There were no special conditions that exist.

**In favor:** Breckenridge, Goodrich, Thomas, Hill

**Opposed:** Drouin

**3: The Variance is not consistent with the spirit and intent of the Rindge Zoning Ordinance because:**

The Ordinance does not provide for single family dwelling with the potential Re-absorption.

**In favor:** Breckenridge, Goodrich, Thomas, Hill

**Opposed:** Drouin

**4: Substantial justice is not done by granting the Variance. If the variance is Is denied, the applicant will not be burdened because:**

There are reasonable alternatives available to the applicant.

**In favor:** Breckenridge, Goodrich, Thomas, Hill

**Opposed:** Drouin



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Prior to finishing the deliberations, Mrs. Breckenridge stated that she would be more comfortable with the Board taking a site walk as her votes might be different. Mrs. Susan Stenersen was heard to say that she did not feel the Board is doing its job as it has not gone to her house and looked at the layout of the land. Mrs. Breckenridge stated that she feels the Board should be responsive to the applicant and would like to put the decision on hold until it can be done to ensure that the Board is doing all it can to accommodate the family. Chairman Hill states the Board could go out this Saturday at 8:00 am and make a decision at the next meeting on Jan 22<sup>nd</sup>. Mr. Drouin moved that the case be continued to Saturday, December 1, for a site walk, and reopened on January 22<sup>nd</sup>. Ms. Breckenridge seconded, and the motion passed unanimously.

Chairman Hill declared a recess for 5 minutes, to resume at 10:00 pm. Ms. Breckenridge moved to postpone Case # 980: Lyle Stenersen, 49 School Street, Rindge NH 03461, Map 29/Lot 5: Application for a Special Exception from Article I, Section 13 of the Rindge Zoning Ordinance – Accessory Dwelling Unit, until January 22, 2008, seconded by Mr. Drouin and the motion passed unanimously.

After discussion, Mr. Hill and Mr. Drouin were appointed case reviewers for December/ January.

Proposed changes to Rules of Procedure. Chairman Hill stated the need to revise ROPs regarding 673:6 and 673:12 is to conform to New Hampshire RSAs.

It was moved by Mr. Drouin, seconded by Mr. Hill to add as #3 on Page 1 and change present numbers 3, 4, & 5 to 4, 5, & 6:

During the three (3) year period of transition from an APPOINTED Board with regular members and alternates appointed by the Board of Selectmen to a fully ELECTED Zoning Board of Adjustment with all regular members having been elected by the Town, the following shall be in place as per **NH RSA 673:3, II** and **NH RSA 673:12, II**. The Motion passed unanimously. It is moved by Mr. Drouin, seconded by Mr. Hill to change “The Alternates will sit at a separate table off to the side” to “The Alternates will sit to one end of the table.” The motion passed unanimously. (Page 2 ROPs)

After discussion, it was decided to leave section “p” on Page 6 as stands.

After discussion, the statement reading “The Secretary/Clerk shall be appointed by the Board of Selectmen” will be changed to “The Clerk shall be appointed by the Board of Adjustment.”

The Board opened discussion regarding the job description of the Clerk. Mr. Drouin requested the bullet

- To mail draft minutes to Board members for their consideration prior to the next meeting.



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be added to the Clerk's responsibilities. It was moved by Ms. Breckenridge, seconded by Mr. Drouin to accept "Job Description of ZBA Clerk" as amended. The motion passed unanimously.

The Board opened discussion regarding the job description of the Chairperson. Ms. Breckenridge suggested all references to "secretary" be changed to "clerk" in order to be consistent. Mr. Drouin requested the bullet

- To be available to the secretary for information that may make her job both more accurate and effective for the Board, replaced with
- To be available to the Clerk for information and assistance as required.

The Paragraph pertaining to legal counsel is to be left as is.

Mr. Drouin suggested changing the paragraph pertaining to the budget process to "Obtain expense and income reports and report to the Board as necessary."

It was moved by Ms. Breckenridge, seconded by Ms. Goodrich to accept the "Job Description for Chairperson" as amended. The motion passed unanimously.

Mr. Drouin stated he would like to have the issue of Mr. DuVernay's role in reviewing cases be put on the next Agenda for clarification. He states it is his understanding that the Code Enforcement Officer's review should be for technical completeness, not for a legal opinion. He states it is not within the ROP for him to review cases before the Board sees them.

Mr. Hill stated his understanding of the review is for the Code Enforcement Officer's aspect of the case. He states he will put this on the next Agenda.

Ms. Breckenridge moved to adjourn at 10:34 pm, seconded by Mr. Drouin and the motion passed unanimously.

Respectfully submitted,

Kathy Strasser, Clerk  
Zoning Board of Adjustment



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**Respectively submitted:**

**Joseph C. Hill, MD**

**Chairman**

**William Thomas**

**Acting Vice Chairman**