



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 May 27, 2008

APPROVED

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

Alternate members present: William Thomas, Richard Feldman, Charlie Eicher and Charles Phillips.

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 Feldman would recuse himself from cases 988 and 989 and asked if there were any other recusals. There were none. He then explained the rules for the hearing.

The Clerk stated the Notice of Public Hearing was posted at the Town Office, Police Station, Fire Station, Library, Transfer Station, Post Office and the Monadnock Ledger Transcript.

Case #986: T. F. Moran, Inc. 149 Emerald Street, Center at Keene, NH 03431, Owner; Edward Stevens, 57 West Main Street, Rindge, NH 03461, Map 33 Lots 19-1, 19-2, 19-3. This application is for an Area Variance from Article VI, Section C.1 of the Zoning Ordinance.

Hill stated that sitting on this case would be himself, Breckenridge, Carmichael, Drouin and Goodrich. Phillips read the case before the Board and Thomas summarized the applicable ordinance(s).

Drouin called for an advisory vote for the Chair to recuse himself from hearing this case because he advised the applicants of case 985 and therefore cannot pass the juror's test of RSA 673:14:1 or Section 2 of the Rindge Code of Ethics. He stated that both cases were received by the chair and that there were not 11 copies of the plot plan for Case #986 as required in the application. He stated his concern that the chair obtained legal advice outside of the Public Hearing as required by the Rules of Procedure, received and signed the application instead of the clerk and that he showed too much interest in the case, including soliciting member's recusal prior to them receiving the case, to be able to render a fair decision. Thomas, Eicher, Goodrich and Feldman stated they remembered the waiver of the plot plans from the last public hearing, the reason being that they would be the same and did not need to be duplicated for this case. Carmichael stated the request for legal counsel was sought after the application date. Extensive discussion was held as to why an Equitable Waiver was sought before the Area Variance and the fact that legal counsel was sought outside of the public hearing. Mr. Duffield stated he did not want to



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

leave any stone unturned for Mr. Stevens to be able to market his properties; he spoke to the chairman, Jane Pitt and the Select Board. He stated the Planning Board did not want to hear his proposal for subdividing the properties before the issue went before the zoning board.

Carmichael stated his opinion that the Board did a disservice to the applicant by requiring him to come before the board twice and would like to make a motion when the case was completed to refund the fee for the first hearing. Hill stated his disagreement and that he proceeded with the advice he got from legal counsel. Feldman stated it was entirely appropriate for the chairman to seek an opinion when faced with difficult questions.

The vote to recuse failed by the following vote: Goodrich: No, Carmichael: Abstain, Breckenridge: No, Drouin: Yes, Hill: No.

Mr. Duffield stated the applicant wants to bring the three lots into better conformance with the zoning ordinance to allow Mr. Stevens to have equitable title to his properties. Discussion was held regarding frontages for the various properties. Mr. DuVernay read a memo to the Board in favor of granting the area variance. After discussion, Carmichael moved seconded by Breckenridge to close discussion and go into deliberations and the motion passed unanimously.

The Board found that:

1: The Variance will not be contrary to the public interest. On this issue the applicant and others provided evidence that:

More conforming to have boundary lines adjusted as presented. Unanimous decision.

2:a The Area Variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. On this issue the applicant and others provided evidence that:

Lack of frontage on West Main Street, and the Area Variance is needed for this because: No other contiguous frontage is available. Unanimous decision.

b. The benefit sought by the applicant cannot be achieved by some other reasonably feasible method. On this issue the applicant others provided evidence that:

Middle lot cannot be adjusted to conform to 250' requirement and another option was explored and was not as feasible. Unanimous decision.

Special conditions do exist such that the literal enforcement of the ordinance results in unnecessary hardship. On this issue the applicant and others provided evidence that:

Same as above. (2a and 2b). Unanimous decision.

3: The Variance is consistent with the spirit and intent of the Rindge Zoning Ordinance. On this issue the applicant and others provided evidence that:



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

It brings the property closer to conformance with latest zoning. Unanimous decision.

4: Substantial justice is done by granting the Variance. If the variance is denied, the applicant will be burdened. On this issue the applicant and others provided evidence that:

There would be fewer options for use, **and there is no significant benefit to the Town in denying the variance because:** It brings properties into greater conformity.

Unanimous decision.

5: Granting the variance will not diminish the value of surrounding properties. On this issue the applicant and others provided evidence that:

Brings greater conformance and potential future commercial use would have a lesser impact. Unanimous decision.

A motion was made by Breckenridge, seconded by Carmichael to Grant the Variance because all five criteria have been met. The motion carried unanimously.

Carmichael moved to refund the application fee for the previous case heard by the Board. Drouin requested to make a motion to rescind the Equitable Waiver; Hill stated the Board cannot do that. Drouin seconded the motion for refunding the fee. Feldman asked if this question could be deferred to the next meeting. All agree.

Case #987: Maurice Sessia, 94 East Monomonac Rd, Rindge, NH 03461, Map 22, Lot 15. This application is for a Special Exception from Article X, Section C and Article XII, Section B of the Zoning Ordinance.

Phillips read the case before the Board and Thomas summarized the applicable ordinance(s). Hill stated that sitting on this case would be himself, Breckenridge, Carmichael, Drouin and Goodrich.

Mr. Sessia explained that he will replace the existing office portion of the building with an office addition in the back of the building, which would bring the property in line with setback requirements, provide more parking spaces in front of the business, and be more accessible to the handicapped. It will also provide environmentally safer storage of possible contaminants. Mr. DuVernay read a memo to the Board in favor of granting the Special Exception. Breckenridge moved, seconded by Carmichael to close discussion and move into deliberations.

The Board found that:

1. The use will not create excessive traffic, congestion, noise or odors. On these issues the applicant and others provided evidence that none of the mentioned criteria change.

Unanimous decision.



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

2. The proposed use will not reduce the value of surrounding properties. On this issue the applicant and others provided evidence that they are upgrading and modernizing previously deteriorating facility and providing handicap access. Unanimous decision.

3. There is adequate sewage and water facilities and sufficient off street parking provided by the applicant. On these issues the applicant and others provided evidence that there is no change to current use of sewage and water facilities and increases off-street parking. Unanimous decision.

4. The proposed use will preserve the attractiveness of the Town. On this issue that applicant and others provided evidence that the new building sitting farther back will be more attractive and more conforming to setbacks. Unanimous decision.

A motion was made by Drouin, seconded by Carmichael to Grant the Special Exception because all criteria have been met. The motion passed unanimously.

Case # 988: Jacqueline & Richard Feldman, 129 Mountain Road, Rindge, NH 03461, Map 10 Lot 10-2. This application is for a Use Variance from Article IV, Section A-3 of the Zoning Ordinance.

Phillips read the case before the Board and Thomas summarized the applicable ordinance(s). Hill stated that sitting on this case would be himself, Breckenridge, Carmichael, Drouin, and Goodrich.

Mrs. Feldman stated the residence is a 4 bedroom house built in 1990 and that they are proposing a Bed and Breakfast using two upstairs bedrooms that share an adjoining bath.

Hill read a letter of objection into the record as follows:

“I am forwarding this letter in reference to Case #'s 988 and 989. My property at 111 Mountain Road is adjacent to 129 Mountain Road and has a clear view from the rear to this property. This happens to be two bedrooms, which would be in view of their proposal. I am against having a Bed and Breakfast located next to my property.

I built this home 10 years ago for the privacy and secluded atmosphere here in Rindge and feel that it would be affected by allowing a Bed and Breakfast. My understanding is that this is a Residential Zone area.



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

There (sic) driveway travels along the property line between us and feel that this would be an issue as well. By adding more cars coming and going will disturb my property as it is and I don't want any more.

Again, I am fully against having a Bed and Breakfast next to my property and want to be kept informed of any discussions concerning this matter. Please contact me at the address provided below.

Nicholas Montisamo
1724 East Citation Path
Inverness, FL 34453
352-560-7561"

Discussion was held regarding the positions of the two properties in relation to one another and the length of the driveway. Ms. Feldman stated Mr. Montisamo built his house after their driveway was in place. Following discussion, Breckenridge moved, seconded by Drouin to close discussion and move into deliberations, and the motion passed unanimously.

The Board found that:

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

No rationale to the 3-13-90 date restriction which allows a Bed and Breakfast. Unanimous decision.

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

a. The zoning restriction as applied to this property interferes with the reasonable use of the property, considering the unique setting of the property in its environment. The applicant proposes to operate a Bed and Breakfast **and this is a reasonable use because** it is a permitted use. Unanimous decision.

b. No fair and substantial relationship exists between the general purposes of the Rindge Zoning Ordinance and this restriction on the property. The purpose of the applicable Zoning Ordinance provision appears to be the prevention of new construction for the sole purpose of establishing Bed and Breakfasts, and granting this variance **will not** interfere with that purpose. Unanimous decision.

c. The variance will not injure the public or private rights of others because this is not new construction to establish a Bed and Breakfast and the location remains remote and private. Unanimous decision.

3. The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance.



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

The variance does not have any negative impact on these considerations because: As above. Unanimous decision.

4. Substantial justice is done by granting the variance. If the variance is denied the applicant will be burdened because this application does not weigh against the general public. Unanimous decision.

5. Granting the variance will not diminish the value of surrounding properties because the location remains remote and private. Unanimous decision.

Case #989: Jacqueline & Richard Feldman, 129 Mountain Road, Rindge, NH 03461, May 10 Lot 10-2. This application is for a Special Exception to Article V or VI, Section 3 and Article XI, Section B of the Zoning Ordinance.

Phillips read the case before the Board, Thomas summarized the applicable ordinance(s). Hill stated that sitting on this case would be himself, Breckenridge, Carmichael, Drouin, and Goodrich.

Discussion was held regarding whether the existing septic system would be adequate to handle the needs of the Bed and Breakfast. Ms. Feldman stated she believed it is a 1500 gallon tank. Discussion was held and the Board agreed that the special exception could be granted upon clarification of the size of the septic system. Breckenridge moved, seconded by Carmichael to close discussion and move into deliberation and the motion passed unanimously.

The Board found that:

1. The use will not create excessive traffic, congestion, noise or odors. On these issues the applicant and others provided evidence that the new use will not create excessive traffic, congestion or odor. Unanimous decision.

2. The proposed use will not reduce the value of surrounding properties. On this issue the applicant and others provided evidence that the remote and private location will not reduce the value of surrounding property. Unanimous decision.

3. There is adequate sewage and water facilities and sufficient off street parking provided by the applicant. On these issues the applicant and others provided evidence that there is sufficient off-street parking and water, and the applicant will comply with Extra Condition 1g regarding sewage. Unanimous decision.

4. The proposed use will preserve the attractiveness of the Town. On this issue that applicant and others provided evidence that there are no exterior changes. Unanimous decision.



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

A motion was made by Hill, seconded by Breckenridge to Grant the Special Exception because all conditions have been met except Extra Condition 1g which must be satisfied by applicant for the Special Exception to take effect. The motion passed unanimously.

Approval of Minutes of April 22 Public Hearing

Hill stated that he and Eicher were appointed Case reviewers for May, not he and Carmichael. Breckenridge moved, seconded by Goodrich to approve the minutes of the April 22 Public Hearing as amended and the motion passed unanimously.

Hill and Eicher were appointed Case reviewers for June.

Hill polled the Board about moving the meetings to an earlier time in the evening. After discussion the Board chose to leave the meeting time as is. Hill opened discussion regarding refunding an applicant's filing fee in the event the Board sided with the applicant in an Appeal of Administrative Decision, and if so, should it be on a case by case basis or across the board? Consensus of the Board was that it should be across the board. Hill asked whether a statement to the effect that the filing fee would be refunded if the application were decided in the applicant's favor should be incorporated into the application and the Board agreed. He stated that the application should state specific reasons that he/she is appealing the administrative decision. It was agreed that these changes would be made to the Application for Appeal from an Administrative Decision and brought forward at the next meeting.

Carmichael stated his concern that the Decision Tree for an Equitable Waiver of Dimensional Requirements does not meet the state guidelines as set forth in New Hampshire Planning and Land Use Regulation 674:33-a. He stated the underlying issue in an Equitable Waiver is that a mistake was made by the Board and the language of the form does not reflect this. Drouin agreed and stated the Decision Tree should be revised completely. He asked whether the issue should be submitted for legal counsel. The Board concurred and directed the Clerk to send a letter to Attorney Fernald requesting her to review the form. (*Letter attached to Minutes.)

Drouin made the following motions, seconded by Carmichael, and were passed unanimously.

1. Clerk to complete and issue for formal approval the new job descriptions for the Clerk and Chairman.
2. Clerk to send a letter to the Selectmen's secretary advising that office that applications to the Board of Adjustment are to be forwarded to the Clerk of the BOA for receipt and signature per the BOA Rules of Procedure.
3. Clerk to reconcile wages paid to members of the BOA since the last quarter of 2007 to the present and submitted to payroll for payment.



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

Goodrich left the meeting at 9:55 pm.

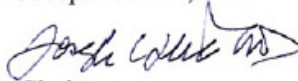
Drouin proposed a language change to the Rules of Procedure, Public Hearing Section 3p stating that legal advice should be sought by a majority of the Board and only within the limits of the public hearing. Carmichael concurred. Discussion was held among the Board as to the necessity of the change. Drouin stated it is a clarification to the process while others felt it might be burdensome to some applicants. After discussion Drouin moved, seconded by Carmichael to add language to Section 3p of the Rules of Procedure as follows:

“Legal advice shall be obtained only upon the recommendation of a majority of the Board after polling all sitting members at the public Hearing. The language of the question to be posed for legal advice shall be decided by the majority of the Board, transcribed by the Clerk of the Board and submitted in writing, by the Clerk, to the legal counsel requested by the Board, with a time frame for a response.” The motion passed unanimously.

Carmichael moved, seconded by Breckenridge to adjourn the Public Hearing at 10:20 pm and the motion passed unanimously.

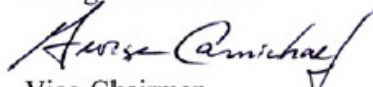
Respectfully submitted,
Kathy Strasser/Clerk
Respectfully submitted

Joseph C. Hill, MD



Chairman

George Carmichael



Vice-Chairman



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

May 29, 2008

Beth Fernald, Attorney
50 Washington Street
Keene, NH 03431

Attorney Fernald:

At the last meeting of the Rindge Board of Adjustment, a member stated a concern that the language of the Decision Tree for an Equitable Waiver of Dimensional Requirements does not meet State requirements. The Board voted to seek a legal opinion as to whether the form should be amended to reflect the language as stated in section 674:33-a of the New Hampshire Planning and Land Use Regulation. I have enclosed a copy of the applicable statute and the decision tree used by the Board.

I can be reached at 899-3389 or by email at fckms@juno.com should you have any questions.

Thank you for your assistance.

Sincerely,

Kathy Strasser/Clerk
Zoning Board of Adjustment

enc