

Board of Adjustment Meeting – March 28, 2006

**BOARD OF ADJUSTMENT**

**March 28, 2006**

**PRESENT: Board Members: Philip Stenersen, Vice Chair, Jeanne Carguilo, George Carmichael, Joe Hill, Alt.**

Stenersen, Vice Chair opened the meeting at 7:10 P.M. at the Meeting House, introduced members of the Board of Adjustment and the Secretary. Attorney Sam Bradley was also in attendance at the Board's request.

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.

Stenersen reviewed the procedures for the meeting.

Hill will read the cases and Carguilo will read the Zoning Ordinances.

The Applicants had to make a decision whether to hear their cases or have it continued since there were only four (4) Board Members present. Stenersen wanted to make it clear that the decision the Board makes will stand according to statute and the reason for appealing a decision would not be because there was only four members. That is not one of the allowable reasons for appealing a case.

**CASE #911-#936a: Jason A. Czekalski**

**212 Thomas Road**

**Map #6, Lot #2 – Residential/Agricultural**

**Appeal from an Administrative Decision to Rindge Sign Ordinance, Article/Section VII, Paragraph J&A. Prohibition against temporary, off premise business signs. Remanded by Superior Court.**

**Sitting: Stenersen, Carguilo, Carmichael, Hill**

David DuVernay said that Jason Czekalski has no standing before this Board. He has failed to provide the Board with the signature of the property owner where he has his signed placed. Without that according to the transcript that was provided to the Board from Judge Sullivan he has no standing and this case cannot be heard. It must be rejected.

Carmichael said that he agrees with DuVernay and added that this is how he understood it as well. Hill & Carguilo understood it the same way as well.

Stenersen asked Czekalski if he had anything to say. Czekalski said the Town was given the point of contact for the State as part of his application, the Attorney General's office and was given the address of the Attorney General's office.

Carmichael said according to our Town Attorney, Czekalski has not obtained permission from the State for the sign as the Judge has told him to and the State is not the Applicant as the Judge said it should be, therefore the Appeal CANNOT be heard.

Czekalski said that only effects one and it still does not affect the other. DuVernay said Czekalski only applied for an Appeal of DuVernay's decision. That is the only case before the Board tonight. Czekalski mentioned that Case #936 is also before the Board, read the transcript, the application as filed, DuVernay said you mean your application and Czekalski said yes. Case #936 as well, for an Appeal relative to a real estate sign. Stenersen said it does say #911 & #936. Czekalski said DuVernay's statements or interpretation that the sign I have presently have placed is not a real estate sign. Czekalski said it was

defaulted once because the Board never provided him with proper notice, like I never received a notice of that at all.

Carmichael said that someone needs to read the Judge's ruling on this. Hill started to read "Order on Plaintiffs. Motion for Contempt - Czekalski said objection! It was not relative at all and is not relative to the case at all. Czekalski said you have to hear the objection first. The objection is that it is not relevant, the judge is just using it to explain things and re directs the discussion. The discussion is my Case #911 and the validity of the application for Case #936 and Czekalski said that motion is not final yet because there are still several days left for the filing of a motion for reconsideration that motion is not even filed yet. Hill asked if he should continue to read the Judge's Motion.

Carguilo said she feels that the Motion should be read because Czekalski started to talk about it by saying that he had not received a notice, so Carguilo thinks it should be heard. Stenersen agreed.

Hill continued to read "The plaintiffs' motion for a finding of contempt is denied. The Town neglected to notify the plaintiffs of a hearing by certified mail, but the plaintiffs were notified by regular mail and attended the hearing. Despite receiving timely notice of the hearing, the plaintiffs refused to proceed because even though they received the notice, it was not sent certified mail. The plaintiffs have only themselves to blame for the fact that the hearing was postponed at their request due to the fact that they received notice by regular mail rather than certified mail. The court has seen few instances in its 14 + years on the bench of such petty form over substance. The motion for contempt is denied. Litigation is not a game, and parties should act reasonably. "

SO ORDERED - David B. Sullivan, Presiding Justice 3/20/06.

Czekalski said this is from a Judge who instructed me, and all of us at the December 12<sup>th</sup> hearing that all of the statutory procedure would be followed. That is scope of a motion for reconsideration that has already been filed and actually quotes numerous States Supreme Court cases that Judge Sullivan's ruling is in violation of. Statutory procedure Judge has very little room and this Board has even less. The issue at hand is the fact you did not comply last time therefore there was no grounds for a hearing and you could not hold a hearing.

DuVernay said Mr. Chairman, the Judge has said in his transcript that both cases would be combined, they are the same case, Czekalski is seeking permission to put the sign in the State right-of-way and he does not have the signature of the State of New Hampshire, he can not be heard, he has no standing in this Board.

Czekalski stated that maybe the Case on #911 but not #936, he said #936 addresses a totally different issue. It has nothing to do with permission of the land owner. Czekalski asked is my sign or is it not a real estate sign? He said our interpretation says it is not. Despite the fact that our Town Ordinance contains no definition of a real estate sign, it contains no design standard for any signs and in light of the Supreme Courts ruling over the past if there is no definition, if there is no written standard you have to use the plain meaning of the language. A real estate sign is any sign that offers an interest in real estate for lease, rent or sale. My sign clearly has that. You are trying to argue the design standard, there is no design standard. There is no design standard in the ordinance, therefore any sign that offers property for sale is a real estate sign. Every element on those signs is taken directly from other real estate signs in place presently, at this moment, in the Town of Rindge. Letter sizing, letter spacing, letter coloring everything, that is what I do for a living, I do graphic design. Everything on there was copied from existing signs. That is the issue at hand here in #936, they can argue away part of this that it is a permission issue, but that is between me and the State. The issue in #936 was of a design standard.

DuVernay stated it was up to the Board whether they would want to hear it or not.

Carmichael stated that he would like to make a motion, Stenersen agreed. Carmichael,s motion: That this case may not be heard due to the fact that the State of New Hampshire is not the applicant here and

that Mr. Czekalski has not obtained permission from the State for the sign at issue. Hill seconded it. Hill would like to also add the response to the remand of Judge Sullivan to this Board. That would be;

#1 The Board considers was the sign ordinance properly interpreted by the Code Enforcement Officer, we believe it was under Section 7J.

#2 Is there any hardship that occurred in the enforcement of the Town Ordinance, It has not demonstrated any hardship.

#3 The State of New Hampshire has not been brought in as the application on the petition and has also denied Czekalski permission to erect the sign.

Those were the three (3) items that the Judge asked us to consider.

Stenersen asked if Carmichael would consider amending the motion. Carmichael agreed.

Stenersen mentioned that a motion has been made and are there any other comments on the motion.

Carguilo asked if it is taking into consideration both #911 & #936 and Carmichael said they were being both considered together. Carguilo asked if we could clarify that by saying this motion takes in consideration both cases. Carmichael agreed that this should added into the motion.

Carmichael made a motion that the Appeal not be heard due to the fact that the State of New Hampshire is not the Applicant and that Mr. Czekalski has not obtained permission from the State for the signs at issue. Hill said and to answer Judge Sullivan's remand to this Board. #1: Was the sign Ordinance properly interpreted by the Code Enforcement Officer, yes it was under 7J: #2 Is there any hardship that occurs with the enforcement of the Town Ordinance, the applicant has not demonstrated any hardships; #3. The State of New Hampshire has not been brought in as the applicant on the petition and also has denied Czekalski permission to erect the sign. Carguilo added and also to take into consideration this is for both cases #911 & #936.

Motion was made by Carmichael and seconded by Hill. Motion was unanimous.

**CASE #939: Jed Brummer Rehearing by Abutters**

**18 Golf Course Lane**

**Map #49, Lot #25 – Residential**

**Application for a Special Exception to Rindge Zoning Ordinance, Article 1X, Paragraph C.**

**Sitting: Stenersen, Carguilo, Hill, Carmichael**

Stenersen asked the Applicant if he wanted to proceed with this hearing even though there were only 4 Board Members present.

Attorney Hanna representing Brummer said he wanted to proceed. Hanna said as we know it is a re-hearing. He presented the Board with a Book and also gave one to Attorney Little may look a little more ominous than I think it is because most of it is a repeat of the two public hearings that we had already and a site visit that we had in addition to the two Public Hearings. Hanna asked the Board to focus on the criteria that Carguilo just read, this is indeed a request for an expansion of a non-conforming building. It is non-conforming with the respect to the side-line, it is not non-conforming with respect to the frontage. One thing that is added to the packet at the end is an affidavit from Jed Brummer which I think pretty clearly establishes that this is a lawful building that is lawfully non-conforming, which means that at the time the Zoning Ordinance was established, there was a building there that was conforming and of course when the newer Ordinance, I believe is Section 11- C one is entitled to expand such a building by meeting the criteria of a Special Exception.

Hanna went over the criteria's since this is technically a new hearing. That will be found on the second page after the table of contents of my narrative for rehearing which I address the criteria that Carguilo has already read to you.

The Applicants proposal will not create excessive traffic, as you know this is an existing single family dwelling that Brummer and his wife live in, one that is being proposed for expansion and there is also a summer cottage closer to the lake on the same lot. The use will not change at all, Brummer and his wife

will continue to live in the house near the road and in fact previously what Brummer has done is in the summers has moved done to his summer cottage, the one close to the lake and has rented out the house that we are proposing to expand. These houses will no longer be used for rental, so if anything I would suggest to you that as far as traffic goes, there will be less traffic because all summer rentals tend to generate more traffic. The lake house will become a guest house.

The Applicants proposal will not create excessive congestion, this is an issue, of course that was dwelt on to some extent during the prior Public Hearings. Essentially we are talking about an overcrowding issue, this is a building that is already close to the boundary line only a portion of that building, I think 36 x 26, will have two stories, another portion of the building will continue at the same one story level. I think from the site visit that some of you were on, we did a list of things that I reprinted here. Again, I point out that the closest house on the west side of the property is the Lorentzen property and that is about 90 feet from this project. In fact this entire particular project is moving internally into the lot, obviously there is no further encroachment, in fact there is a reduction of the encroachment. You will remember the thing that we called the bump that was in several of our previous discussions it formally housed a water heater and in recent years it became part of the kitchen and extends out about 4 feet. That will be eliminated so that we will be back to the main part of the building. Other than that all of the addition will be moving away from the Lorentzen property. As you know from the site visit, there is a heavily wooded area between the Lorentzen house and the proposed house, it is fair to say that the primary use of the Lorentzen house is during the good seasons, fall, summer and so forth and of course although a good number of these trees are evergreen, the deciduous trees will have leaves on them. I draw your attention to the depth, the Lorentzen house is down near the water, this house is back up near the road. So as far as we are concerned, the congestion can be satisfied, that criteria is satisfied. I draw to your attention to the list that I have done here and also to some of the letters that have been saying that the project has been the same since these letters have been written by the Tieger Real Estate, and by Edwin Callahan of Tieger.

The next criteria standard that we need to meet is the proposal will not create excessive noise or odors and I will not dwell on this because this is going to be the exact same use as the existing houses and it will continue to be a residential property.

The Applicants proposal will not reduce the value of surrounding properties, I draw your attention to the letter that the architect Len Pagano wrote stating that in his opinion the proposed project will not have an adverse effect on the Lorentzen property, in fact it will be attractive and will not only visually enhance the Lorentzen property but will increase the value based on Brummer's investment. I believe you have seen the elevations, this is going to be an attractive kind of a summer cottage style which will be very fitting in this neighborhood and of course it is going to be a substantial investment. In addition to that I draw your attention to some of the letters that talk specifically about the value, I just ask you to use your own judgment on the value issue given the location of this property as it relates to the Lorentzen's, given the trees, given the neighborhood and particularly given the investment of the style of his house. There will be adequate sewerage and water facilities, you will recall that Carl Hagstrom's letter which was in your previous file and I put it in this one as well, he determined that the property will meet and exceed State and local requirements for a five bedroom loading. Apparently when he looked at the property, he looked at the tax map the property is slightly smaller, I can tell you that the calculations are still that there are at least 150 to 200 gallons more of loading that could occur on this lot. There will be two bedrooms in the house that is before you and there are three seasonal bed rooms in the summer cottage. Hanna said it does not matter whether you grant the Special Exception or not this house will not be renovated without a State approved septic system, we certainly would not object to a condition that the building permit is contingent upon obtaining on having a design which is approved by the State. Hanna feels that the Hagstrom letter speaks for itself.

There will be sufficient off street parking, again the parking will be where it has always been. Hanna believes that the intensity of the use will probably be down as the result of the proposed use for two people to live in the new house and have the summer cottage be a guest house and not a rental. Parking should therefore be less of a problem and it will be in the same location. The renovations will preserve the

attractiveness of the town, we have a letter from the abutter immediately to the East, Lorentzen property to the West, and we have the Pagano's, the architect's, letter. Hanna mentioned that the house we are talking about is more than 100 feet back from the lake so we are not going to have that kind of impact on the lake. There will be a couple trees that will have to be cut and there will be four trees that will be replaced. It is a fairly wooded lot already obviously the adjacent lot is heavily wooded, I do not think that is a factor. The building known as the bunk house as I said is legal, there has been a lot of discussion about whether this was legal, and there is an old picture in which you will see tonight by Attorney Little. He will show you 1940's photograph of the small cabin and he will propose that cabin on an elevation which makes it look like a peanut in a tomato or something, but the problem is that the cabin that is proposed on the elevation is not what exists there today. This is an expansion of about 850 to 900 square feet to over 2,000 square feet but that elevation that you will be shown is really distorted. Will let you look at it yourself.

Recorded today at the Registry of Deeds was another survey commissioned by the Lorentzen's, it will show a different position by this surveyor which causes a difference of a foot and a half as it relates to the closest point of this building. We dispute that survey but I do not think that is the issue before you tonight. As far as Hanna is concerned, this application and every argument that we have made orally and in writing pertains to either survey. One would mean that it is a foot and a half closer to the line ours would be a foot and a half further from the line. I suggest to you that if the abutter wishes to appeal this based on the survey, we cannot help that. But this Boards function seems to me is to let this case go forward regardless of which survey you look at. As far as the surveys go, I didn't submit with my materials today the Al Vorce survey, I suspect you have that but he would like to confirm that we do have it. Helen Mae Olson showed Hanna that we do have it and it is dated October 21, 2005 and Hanna drew the attention to the fact that the scale is actually 1" = 20'. Brummer said he had another architect from Peterborough come over and see what his position would be on it. He could not see anything wrong with it.

Carmichael said in looking at the plans he sees a 5 foot offset from the house to the boundary to the west. Hanna said yes. Carmichael stated that the new plans the neighbors presented show it at 3 1/2 ft. Hanna said to remind the Board that the 5 feet is of the so called bump and that is being eliminated. With the construction, that bump will be gone.

Carguilo asked how many cars can be parked in the parking area. Brummer said in the winter there would be three, in the summer there might be five or six depending how many guests the renters had then it could be seven or eight. The summer house is down below which is not suitable for winterizing because of the elevation. That will be a guest cottage for one or two of our seven combined children, if they come and the two of us will live up above where the distance to the parking is short.

Carguilo also said you are going to cut down some trees? Brummer said there is one dead tree in the front of the present cottage that will have to come down anyway because it is filled with ants. There is one pine tree on the side and probably two or three small little hemlocks. Carguilo was concerned that if there were any large trees that would block the view from the lake. Brummer said that you probably will not see the lower cottage from the parking lot because of the planting of trees.

Stenersen asked if anyone was present that would speak in favor of this project. Margaret Brummer mentioned that she feels they need a decent place to live and that it would be very attractive. She also said that her son helped take care of the Lorentzen's mother and wished they could mend their differences. Also she mentioned that the Lorentzen's only have a summer cottage and comes up only 2 months out of the year and their house is down by the lake.

Stenersen asked if anyone was opposed. Silas Little representing the abutters, the Lorentzen's: I think it is important and I hope as far as this matter the Board has a record of Case #895. Case #895 was heard back in 2004. This Board determined that there were not lawful conditions made to this non-conforming building and that is why that case died. Therefore this Special Exception cannot proceed because it is not a lawfully existing non-conforming structure. There was never any action taken from the determination

of the Board by Brummer at that time, there was never any action taken by Brummer with respect to the memo that David DuVernay gave I think fundamentally under the Zoning Ordinance you do not have valid Special Exception Application because this is not a lawfully non-conforming structure. I realize that there has been attempted loss by saying well if we ignore this thing now give it the appropriate baptism it will all of a sudden become lawful, that is not what the statute says. The ordinance says a Special Exception expansion for a lawfully non-conforming structure. I will also note that Brummer in 1996 filed for an abatement of his taxes and he made no attempt at that time to correct the tax card that existed in April 1996 when he made the application to the Board of Selectmen. Little feels Brummer had different recalls at different times. As Hanna recognized, the real issue here is that you cannot establish today two residential structures on a lot in this zone and that is what Brummer is seeking to expand. So we are not dealing with an expansion of a non-conforming building, we are dealing with an expansion of a non-conforming use. You cannot expand under your ordinance a non-conforming use.

Article 4 Residential District of any one uses permitting, the residential district is for single dwellings only as defined in Article 16, Section 2 each dwelling shall be on a separate lot. It is not a permitted use. You cannot take this piece of land today and put both those structures on this lot. Can you go to DuVernay today with a set of plans and put two structures on one lot that are going to be used for residences whether they are seasonal or not, you cannot. I think the Board needs to reject the application on that basis. The reading here is that he needs to seek a Variance, but I do not think he needs a Variance. I do think there is an issue in respect with Hagstrom's letter. Septic loading and all those calculations depend upon accurate measurements. Hanna admits that Hagstrom's statements were not accurate. I also note that there are other considerations with respect to septic designs. One is the setback of the Town slope although none of the plans before this board show this. The Board certainly will remember from its view that this basically is a bench right off Golf Course Lane and it drops down to the Lake. On the top of the slope there has to be a setback if you are going to put a septic system in. There has to be a setback from the right of way. The Lorentzen family is going to be looking at essentially a spike fence that is approximately 5 feet high that will follow the contours of the lot and will be 3 1/2 feet from the property line. That will impact their air, light, view, it will impact noise, and it will act as an enormous sounding board that will have a detrimental effect on that lot.

Hill said when you are talking about the spite fence you are talking about the house, Little said yes. The purpose of setbacks is to allow some sense of distance between structures to give someone the sense that you are not being near or on top of, this house will give every evidence of that. No abutter has a structure going up of this magnitude with this length of 35 feet long and basically 35 feet high five feet from the parking lot.

One talks about the character of the neighborhood, the character of Rindge development around the lake, I submit that that kind of structure that close to the water is not consistent with anything that presently exists and should not be allowed in Rindge.

I know that there is some dispute to what Mr. Pagano has to say. All I can offer you is what Pagano said at the site walk, maybe Pagano spoke a little bit too quickly without realizing who his audience was. But I also would submit that again common sense and to the extent we needed endorsed by the appraiser that common sense tells you that we do not need a structure of this magnitude. I would note that none of the side views that are against Lorentzen property and presented by Pagano or by Brummer, the side elevations are basically a product of the Lorentzen feeling to try and get the Board to see what exactly the Lorentzen family is going to be looking at. So I think that in terms of impact on the structure that is most immediate that this is an adverse impact and there is no getting around it and does not make any difference to the people on the other side who think it is a great idea, it doesn't make any difference to the people on Golf Course Lane thinks it is a great idea, they do not have to look at it, it is not their property that is going to be adversely impacted.

Now finally in terms of the presentation here that if one just looks at the requirements and thinks of the requirements for a Special Exception and just thinks of a structure that is going to be of this magnitude that is sitting five or eight feet from the property line will depend on its screening not on its vegetation but entirely the vegetation that is on the Lorentzen property. Because no one can put any serious landscaping material that close to a foundation, that close to the side line. This is not something that meets any one of those criteria for a Special Exception and it does not keep with the spirit of the ordinance and it increases

the congestion on the Lorentzen property and has adverse impact on their property. Because of the variation lot sizes and the fact that the septic system design did not factor in. The required setback of a septic system from the right of way, required setback from the top slope of a septic design, there has been no establishment that an adequate septic system can be established here. I think it is not nearly for this Board to say it is good enough if he gets a septic system approval. I think the Board needs to be satisfied particularly since we are in a shore land protection area.

The Board has a lot of material but I do think it is very important that the Board look back at the Case #894. That record is different from what Brummer is saying here today so I think the Board needs to look at that carefully and look at the statements that were made in that case and also the statements that were made in Brummer's application for a tax abatement in '96. Try to reconcile all those issues in respect to whether this is truly an expansion of a lawful non-conforming use as well as whether this is a truly and expansion of a lawfully non-conforming building. I could not pick up a building permit today, two building permits today to put two residences on one lot.

Carmichael said Little mentioned that property abutters to the East would most likely not be concerned about this because they are further away, however if I look at this scale on the plan, they are closer than the Lorentzens are. Little said their property line is and Carmichael said no their house is closer than the Lorentzen house is to the Brummer house. Little said if you recall from the site visit the Lorentzen house elevation is lower than where the cottage is and the Lorentzen will not only be looking at something that is going to go 35 feet up in the air and there is another 20 feet elevation on top of that.

Stenersen mentioned that before we continue he has a letter that needs to be read: Helen Mae read the letter which was from Carolyn West. That letter will be attached to these minutes.

DuVernay asked what setback requirements do we have for septic systems from the road to the abutters, ten feet I believe. DuVernay does not understand what the issue is, we have a certified license septic designer who has indicated that you can have a septic system on this property to handle both properties. As far as the memo I wrote on September two years ago, I went with Rick Donovan, the building inspector we did determine a couple of things that Brummer had done to the house, we determined that they were done properly and he applied for building permit to correct those faults. As far as I am concerned the house is a lawful, non-conforming building and can be expanded with a Special Exception.

Little said that what DuVernay said today varies from what he said back two years ago.

Theodore Lorentzen, Trustee to the Lorentzen Family Trust stated, he knows a lot of people here tonight but for the rest who do not know me, we have lived on that property since 1910 and we have an invested interest in this property and preserve the lake. As the issue of changing a use of a house legally, the house east of Jed was originally a cottage and it was lawfully converted to a winter or four season dwelling jacked up, there was a state approved septic system and everything was done according to the rules and regulations of the State of N.H and the Town of Rindge. It was also done to the West property, they unfortunately lost their house but they built a new one. They did everything properly, changed the use of the house, got a State approved septic system and never had any problems and nobody objected to these changes. They respected the Town laws and the Zoning. In respect to DuVernay saying that Brummer got a building permit to expand into the setback with his addition, I do not know how that could be possible without coming before the Board and getting a Variance and they cannot get a Variance to go into further encroaching the setback. So I dispute what was said, he could not possibly get a building permit.

I know that he went before the Board of Selectmen after that original meeting on Brummer's application to report that his house had been added to without building permits. As far as I am concerned, that is a very serious offense and I do not believe anything was done about it. You cannot further violate the dimensional requirements, you have no choice about that, we have shown that his plans will further

violate the dimensional requirements. Lorentzen showed the map and described what he was talking about.

Stenersen asked if Lorentzen could explain what he means about the further violation. He showed the house that is there now, this is the illegal addition that was put on. You cannot give a permit for an illegal addition. Stenersen asked if that was the part that was coming off? Lorentzen said it does not matter that it is coming off sir it was put on there illegally. It is there and existing now, you are looking at an illegal non-conforming structure.

Carmichael said in looking at our Town Zoning Laws and specifically, #3 says Special Exception to alter or expand a non-conforming building must meet all four conditions of a Special Exception and the alterations or expansions must not further violate the dimensional requirements. Carmichael asked DuVernay does this further encroach into the setbacks. DuVernay said obviously not as he is having it removed. Further discussion with the Board followed.

Lorentzen wanted to speak about the congestion and overcrowding on this lot and also like to speak as to how he is going to construct approximately 5 feet from our house, a foundation with the face of that foundation which is 5 feet from the house.

Hill said he is not constructing five feet from your house. Lorentzen said property line and Hill said you said house, Lorentzen said he was sorry. I meant constructing his house five feet from the property line. Stenersen said the way he constructs it, you have your rights, he absolutely if this was to be granted that would be his problem how to do that, he has no right to go on your property, but that part of the construction does not effect this. Lorentzen is speaking only as far as what you can put on a 1/2 acre lot. Two big houses on this lot is a very difficult thing to do. Just taking a lot load is enough to satisfy your utilities application but I think if you look at the plan and you know the sloop is here and the driveway is here where exactly would this septic system be, it has to be at least 100 feet back from the lake and with the sloop where it is, he showed the board what area there was to put it in. Stenersen said they make system to allow you to do that and Lorentzen said they do not allow you to park on your leach field. Stenersen mentioned yes they do. Lorentzen said he checked with DES and their appliance officer told him that no one in a residential construction is not allowed to put a leach field in the driveway or in the parking area. Stenersen said they have systems designed specifically for that. Lorentzen said it still causes congestion on a lot it definitely does effect it. I think you know how serious we feel about what this project will do to us and I think the letter from the appraiser is not a letter from a real estate agent and this guy has nothing to gain from this. He has talked to real estate agents and was told that they could write anything he wanted them to write but it would not mean anything. I had to have somebody who was a professional to tell me just exactly what this is going to do to us for our family and the Town. Two dwellings on one lot changing the primary dwelling into a guest house and then building another dwelling. Everybody else has taken a primary dwelling and if they wanted it winterized they take it down or they jack it up and do the right thing. That is all we ask and we do not understand why that was not done in the beginning instead of what Brummer has proposed.

DuVernay said he would not quarrel with the idea that the primary dwelling is the one by the lake, it is not even insulated. He only used it in the summer and rented out the other one in the summer and now he proposes to live in it and expand it.

Carmichael said the concern is about two dwellings on the property. Those were pre-existing uses correct. Carguilo said exactly. Carmichael said they would not be able to build two homes on one small piece of property now a days but they were there for quite awhile as Carmichael understands it. Carguilo said right and that is why they were grandfathered. DuVernay mentioned that there are a number of properties in this Town on lakes that have two dwellings where generally one is a guest house

Carguilo said am I to understand from this that your septic system is a working septic system and it is ok for five bedrooms. Brummer said it will be and he will make it contingent on having that done and approved by the State. Carguilo said she just wanted to make sure because it seems to be one of the bones of contention. Brummer said it is designed now to have one bedroom but will be two and the lower cottage has three bedrooms maximum.

Little said there is a letter dated September 22, 2004 from Brummer to DuVernay which he stated that he needed to get two building permits for two things that he did to the property. One was the conversion of the shed for the oil tank the other was for an expansion of a bedroom closet to the existing porch. Before these permits can be obtained Brummer needed to get from the BOA a Special Exception for these expansions of your non-conforming building which is part of Case #895. Little said Brummer does not have a lawfully established non-conforming building on his property. In fact I think there is a real question according to the tax records if he has a lawfully non-conforming second residential use on the property because originally this was a bunk house that was used ancillary to the house down by the lake when they had an overflow. You will recall we were before this board in August 2005 because Brummer wanted to expand seasonal house by adding onto that building so that they could have a bedroom and he treated that as his primary residence. I think that Brummer's record before this Board would show that he has a different case taking different positions and I think that the Board should go back and look at each of those in particularly DuVernay's letter of September 22, 2004.

Hanna said we have had this discussion many times in particular about the bump. I heard earlier today in another case the terminology form over substance. We are here for a Special Exception and as part of that Special Exception we are eliminating that bump and I think that is pretty clear with respect to all other issues raised by Little there have been building permits obtained. Little said there was no permits for the conversion of the shed and the porch. DuVernay said subject to, it was always to be subject to the Board's approval. Hanna stated the house is being renovated as part of this Special Exception. Little said so the expanded area and the existing building does not exist under the Rindge Ordinance. It has been admitted. Hanna said that is not true. We rely on Brummer's affidavit, the bump has been expanded for kitchen purposes but the footprint was there from before 1960 before the adoption of the Ordinance. So we rely on Brummer's affidavit and we also have confidence in the Board in applying the criteria.

Barbara Lorentzen has one more issue about the legality of the bump house. In 1980 both were seasonal homes. In the 90's Brummer used the upper house in the winter. He has never had State approval for the septic system on the house he now wants to call his primary residence on the property. We do not even have to discuss who put the septic system there. The State Law says when you convert to year round use, you have to apply to the State for septic approval and he has not done that, so that makes it illegal. With Brummer having five six or seven cars there, he has no room for a leaching area. Brummer basically tore the bunk house down and put a new house there. He is raising the house, he is building a second floor within the setback that is violating national requirements. He is putting a new addition on the roadside to incorporate his entrance area and bathroom, that is into the road setback those are dimensions that were never there before. He is building a walk in basement so that constitutes three floors which goes into the boundary & road setbacks. Article 9 says the expansion may not further violate dimensional requirements. Stenersen said we have already gone over that. The case where Brummer asked to expand the lake house is case 920 and it was heard on May 4, 2005. He made an application for a Special Exception to Rindge Zoning Ordinance, Article 9 Paragraph C to add a 10 x 13 foot addition to a two bedroom of a lawful non-conforming building and that was for the lower house.

DuVernay stated that Dr. Parker went with Hagstrom to the Brummer house and I understand that they found that the system was working properly.

Roberta Oeser mentioned that she believes that when converting from a seasonal property to year round that you need to have the septic system working.

Barbara Lorentzen read the Septic System Laws: Approval for expansion of an existing use and including commercial and full time occupancy. Prior to commencing any modifications, additions or replacements of any structure or use of any structure which will result in any increase of the load or on a subsurface sewerage proposal system or prior to commencing full time occupancy of a structure, shall submit an application for individual sewerage to pull the system approval. It is not enough to say that Hagstrom came down and looked at it and said it was ok, that is not enough he has to apply to the State. There is a

lengthy application, he has to satisfy all these questions no waiver to these rules should be allowed to accommodate any expansion of the existing use or conversion of full time occupancy.

Stenersen said if I can clarify that, I think we are saying the same thing when she says that it has to be made sure that it is acceptable that is the process of getting there. Barbara said right, but Brummer never did that. Stenersen replied he understood that. Carmichael stated that it could be a pre-condition to approval.

Little hoped for the record, that the Board noted two other cases #920 & #895 as it is very important in this whole process.

Hill made a motion and seconded by Carguilo to go into deliberation as long as nobody else wishes to speak.

Eric Lorentzen said that Brummer has rented either the lower or upper cottage or both all the years that he has owned it. To say that the lower cottage is the guest house now, it doesn't meet his back practice. If he has rented the upper cottage, he has lived in the lower cottage. If he is living in the upper cottage he is renting the lower cottage. Both cottages are very rarely unoccupied during the long season. To say it is a guest cottage now is not true because Brummer is a commercial property owner and he makes money renting one or the other cottage. Back practice it has never been a guest house it has always been income property one or the other.

Brummer said he has lived in the summer cottage for the last ten years, it has not been rented. The application before us is for the house. Eric Lorentzen stated that he has been out there every weekend most of his life and married life with his children and every time there was a fair going on there was more than 4 cars parking on the right of way and guess where they parked, on the Lorentzen part of the right of way which is not his property. The interest I am making is that he has less than a 1/2 lot, its crowded and anytime he is going to have guests it is going to be crowded.

There is a motion on the floor to close for deliberation all was in favor.

Carmichael said we have to look at the Town Ordinances and also the criteria for approving this.

#1. The Board finds that the use will not create excessive traffic, congestion, noise or odors. Carmichael looked at it as a lake house not a rental. It is not going to create excessive traffic, you will get exactly the same traffic as the existing house, he is not saying that he is going to sell the lower house and have extra people living down there, just the opposite. Stenersen said even if it is a rental it will not make any difference. Carmichael said it would be more if it were a rental, people would be coming in an out all the time. Carguilo said it won't be more than what it is and Carmichael said correct.

#2. The proposed use will not reduce the value of surrounding properties. Carmichael asked to go back to #1, on this issue the applicant provided evidence that it would not create excessive traffic, congestion, noise or odors, as I see it and does everyone agree with that. Yes, Carguilo said and also say noise because there is a splendid area and she feels that trees do block some noise. Hill would like to add to that because I do not feel that there was any creditable evidence by the abutters that would lead to increased traffic, noise, congestion or odors. Stenersen keep in mind that it is not increased, it is excessive. He said there is a substantial difference there.

Back to #2 proposed use will or will not reduce the value of surrounding properties. Carmichael would like to go to Leonard's letter saying that it would not have adverse effect and we also have a letter from a real estate agent plus we have more than one letter supporting that, that's how I see it. Carguilo said there are pros & cons because there are also letters that say that it will but I believe they will equal each other out. Carguilo said we would have to decide which do we think is right. Stenersen said the other thing to considerate is the difference between 5 feet not sure exactly what it is. Carmichael said it is going from 5 feet to 8.0 feet according to what we heard. Stenersen said the question really is the difference between 8

feet and 15 feet if they were 7 feet further away would it still have the same effect if it were 7 feet further away. If it were 7 feet closer, the size of the structure really does not matter. He is allowed to build it 15 feet away and the fact that it is 7 or 8 feet is that going to make a difference in the value. Hill said if the other house was right on the property line, but it is not. Carguilo also said that we have letters from the abutters on the other side that did not feel that it would be a problem. Carmichael said it is actually closer than the Lorentzen's house is and it is approximately the same distance from the lake as the Lorentzen house is. Carmichael said do we see that this is something we feel will actually reduce the value of the property. Stenersen feels that our ordinance says tends to reduce not will/will not. What evidence have they provided us that really proves this. We have letters from abutters and if they were looking down at his house it would be entirely different.

#3. There is/is not adequate sewage and water facilities and sufficient off street parking provided by the applicant. Carmichael stated that all local requirements would be met as part of the conditions. Property has not changed here, it is not like he is adding extra homes down below. Carguilo said maybe we can put a stipulation on it that they have to get a State approved septic system. Stenersen said they have to have a design. He has a plan to put in an adequate sewerage for 5 bedrooms and the off street parking will not change. Stenersen said he has to have a State approved design.

#4. The proposed use will/will not preserve the attractiveness of the Town. Carmichael said on this issue we have letters from the abutters and the brokers that these improvements will only enhance the area. Carguilo also said that the fact that is far back from the lake and that they will be leaving trees as a buffer. Special Exception letter says to alter or expand a non-conforming building, it must meet all four conditions which we just said it did for Special Exception. The alter or expansion must not further violate dimensional requirements. Carmichael does not believe it is further encroaching dimensionally into the setback. Carguilo said it is no further than the existing house is, it is going into the setback but no further.

Motion made by Carguilo and seconded by Carmichael to grant the Special Exception with the condition that the applicant obtain a State approved septic design. Motion was unanimous.

David Rayment Attorney representing Home Depot mentioned as you accurately stated earlier, we would like to proceed with a full Board, there is only a four member Board tonight as you stated at the beginning of the whole hearing procedure tonight that it was ok to do. We are asking for it to be continued and if possible because of the crowd it draws in the area and so forth I would like it continued and have a special meeting before the next scheduled monthly meeting. Stenersen stated that we have a request to continue the Home Depot hearing to April 11<sup>th</sup> at 7:00 p.m. here at the Meeting House. Hill made a motion seconded by Carmichael to continue the Home Depot Hearing application to two weeks from tonight which is April 11 2006 at 7:00 p.m. at the Meeting House. We will be taking no other business on that night. Motion was unanimous.

**CASE #943: Rindge Country Convenience Store**  
**1116 Route 119**  
**Map #31, Lot #7 – Commercial**  
**Sitting: Stenersen, Carmichael, Carguilo, Hill**

Mark Wolterbeek would like to continue with case even though we only have four Board members present.

Nathan R. Chamberlin of Meridian Land Services, Inc. is representing Mark Wolterbeek. Chamberlin explained that this property would house an Exxon Gas Station and a convenience store. Wolterbeek purchased this property in 2004 and received site plan approval to tear down the existing structure and build on the existing foot print also part of that approval was to add a driveway around the back and was to be for deliveries. When the site is developed it would only enhance the property. At this time Wolterbeek would like to add a drive thru for Dunkin Donuts. We really do not want a gravel drive thru. Chamberlin showed on the map where the drive thru would go. It is already an impervious area and is in

a wetland buffer, showed that on the map also. If they get approval, he showed where they would pave and curve it so it is not directly in the wetland. What they plan to do with the drainage system is to add an oil/gas trap for oil/gas separator to the existing catch basin before it goes into the wetlands. This will trap any oil/gas that might be on the surface of the pavement from the cars using the drive thru. A paved driveway has less potential for erosion than a gravel drive.

Carmichael asked where the wetlands were on the plan. Chamberlin explained it. Carmichael said you are approximately 15 feet away from the paved surface to the wetlands, Chamberlin stated that this was correct.

There is a temporary wall there now and it will be removed and reconstructed so that it does not lean anymore.

Chamberlin mentioned that there are five points to granting a Variance. As far as public interest, it will be a very nice looking building all modernized. They will have a new State approved septic system.

They are restoring drainage system and proposed BMP's Best Management Practices. will improve water quality currently discharging to wetlands. Wolterbeek built on the existing foundation as this is non-conforming. That was the only location to build it without getting a Variance for filling. The only location for the drive thru is in back as a buffer and there is no way to shift the necessary driveway out of the wetland buffer, so that is our hardship.

They are capturing storm water and drafting it through treatment measures that are not currently in place. Chamberlin does not see how it can injure the public or private rights of others. In order to develop the property in the manner in which he needs to attract the drive thru public. If it was denied you would be jeopardizing the tenant. The intent of the ordinance is to protect the wetland which we are doing.

Susan Emerson an abutter stated that when Wolterbeek came to the Planning Board he wanted that driveway for trucks, there was never any talk about a drive thru. If there was I would have opposed his building. I am very upset that he wants to put a drive thru in. I also heard that it was going to be a 24 hour gas station. It was suppose to be 6:00 a.m. to 10:00 p.m. and now I understand it will be 24 hours. I am strongly opposed to a drive thru. Wolterbeek stated that it will not be 24 hours.

Dr. Parker, an abutter, asked where the traffic will go from the drive thru will it go onto 119. He was told that there would be one lane and Chamberlin showed on the map where the traffic will go. Parker has a problem with the whole concept. When people go thru the driveway he is concerned that people will be throwing their trash all over his property.

Peter Eleftheriou, an abutter, wants to know if he should have been notified when he was going for the permit to construct the existing building. All of a sudden they tore the old building down

DuVernay said the original plan was to reconstruct the existing building. When they started to tear off the roof and some of the sides they found all kinds of visual problems that they really couldn't overcome. The building as you all know was swaying in the wind and the building inspector told Wolterbeek that he would not be permitted to rebuild or remodel, he must get a building permit to construct a new building. There were no abutter notices required for the building permit.

Eleftheriou asked so if I wanted to put a building up, I would not have to notify my abutters with no problem. Stenersen said as long as you meet all the setbacks and other requirements. Eleftheriou said the building is a lot longer & wider than the original. As far as the septic I asked where the septic was is it out back or is it near the roadway. Wolterbeek said to my knowledge and Elftheriou could not get a straight answer out of him. It has been wet out back for years.

DuVernay said if I might object, this has nothing to do with the application before you, I think if you stick to the application, deal with it so we can get out of here at a reasonable hour.

Stenersen asked Eleftheriou to keep his issues focused on the wetlands as some of the issues you are addressing are lawyer issues. Carguilo said are you saying that the runoff will be on your property. There will be more wetlands back there than there is now. Carguilo asked is between the two properties all wet and if the runoff is towards your property you will have more. Eletheriou said yes.

Kathy John heard that the hardship was that without a drive thru people would have to walk in to get coffee. The traffic will be increased a hundred fold with a drive thru.

Czekalski asked does it improve the site's compliance with the intent of the wetlands ordinance or does it lower the site's compliance with the intention of the wetland ordinance?

DuVernay said the Board has to take into consideration that this entire plan has been approved. The drive-thru has been approved as a gravel or pervious. Only issue is paving because he wants to pave within 50 feet of the wetlands. As Wolterbeek stated he will improve the run off situation by curving it and put in a Better Management system. It does not exist now and is not going to exist under the plan that was approved by the Planning Board. The hardship, I think, that we do not have the right or the option to go inside the certified copy. Well you may want to do that, the people he is negotiating with requires a drive thru and a window. That is the only way he can get this done and that is a substantial contract.

Mellor said ConCom is not required to render an opinion on a Variance but is for a Special Exception. Mellor said the ConCom needs to get the completed application and any maps, etc. to ConCom and they will be looking at the same information that we have. In this particular case this is not they way it played out. Mellor had arranged with the applicant and subsequently met with the engineer on site and looked at the maps and I think it is similar to what you were presented with tonight. Although I cannot verify that the building was set back.

After the site review the ConCom gave the following opinion.

"It is the opinion of the Rindge ConCom that the revised plan submitted to us by Meridian Land Services' engineer, Nate Chamberlain, dated March 22, 2006, may have a greater impact upon adjacent wetlands than the previous plan approved by the Planning Board. In addition, during our informal site review of March 22, 2006, we observed the following potential problems:"

1. The retaining wall appears to be collapsing and if it fails will directly impact the adjacent wetlands.
2. The current storm water management system does not appear to be adequate.
3. The dumpster could be relocated out of the 50 foot required setback
4. There does not appear to be any mitigation for loss of additional areas.
5. We are uncertain about how snow removal will be handled.

As for the retaining wall it was agreed that it would have to be redone and that should be no surprise to the applicant and it is better that it be put in writing that it was an issue. The dumpster was not on the original plans as well. Chamberlin said they put it there to get it away from the street as much as possible.

There is nothing in the ordinance that requires mitigation for a setback. It was put in there because in other cases when we are trying to evaluate the impact of a wetland we try to determine the balance of the impact. In this case we could not come up with anything.

Stenersen asked the fact that they want to put a berm on that and keep water from directly running in and around there would that be any kind of improvement. Mellor said it might be considered an improvement except on the other hand, if somebody said considerably with much more traffic. Carmichael said the Wetland Ordinance, Section 5a states that no building on impervious surface shall be established or expanded in or within 50 feet of the high water mark or surface water to wetlands. Here the applicants are telling us it is 15 feet away and they plan on putting in a paved surface. Carmichael asked why he didn't mention this in his review. Mellor stated I felt that this was up to the Board to decide..

DuVernay asked if they could explain on the opening paragraph where he indicated there was greater impact. Mellor said he thinks that is self evident. At present the approval is for a gravel driveway. Drouin said there is a 6% increase on the impervious area. Stenersen asked to have it explained the difference between a percentage and cubic feet per second. Drouin said he would give the numbers and then you can resolve it. 4.77 CFS in gravel – it is 4.78 CFS in pavement.

Hill asked what their plans are for snow removal. Chamberlin explained it using the map. Chamberlin said there will be no additional flow of traffic, there would be no impact on the wetlands and you cannot put a curbing on gravel.

Kathy John said Chamberlin mentioned that there was no greater impact but when looking at the numbers there was greater impact.

Drouin asked what are the rules for when you need all the documents in? He was told two weeks. Carguilo did not see any big deal in getting a map tonight because it was not anything that required a lot of reading etc. But in another case tonight we received a lot of material which required some reading. Carmichael read the regulation that said applications must be received in the Selectmen's office not later than 2 weeks before the next scheduled monthly meeting. Carmichael asked if the application was received in time and was told yes. Drouin said if ConCom has the information, the BOA should have it. Stenersen stated that it is the application that must be received at least in the past if they have to make changes we not necessarily had to have all the plans. I believe the Planning Board application is not really complete until you have all the plans and everything is there. In the past we have not applied that to the BOA. Carguilo says also in addition to that if they met with you on what you were saying and they made changes and we gave you the plans ahead of time, they would not be right. Drouin said that Home Depot's package was complete and Carguilo said they have a lot for us to read. We have to sit home and read all that information so we need it ahead of time to read it.

Czekalski understanding of the whole ordinance, the ConCom has no standing in giving a recommendation because they are only required to be involved in a Special Exception and they are not allowed to put words in the ordinance that are not here.

Stenersen stated that the BOA can get evidence from any place. We can take evidence from the ConCom on a Variance.

The other issue is the 13% difference. Drouin knows when you get into the type of engineering math that is involved here a 13% difference in yield the final result of 101. As far as volume associated with that 1,600 sq feet just pulling some stuff off the top of my head is probably about 2 cubic feet per second overflow difference.

Emerson said it was mentioned that the creek only ran in the winter. That creek is on my property and it runs 12 months out of the year. Stenersen asked what creek are you talking about and Emerson said the creek that runs into his wetlands.

Pat Barry heard that he went out of his way to delay information. She did not hear tonight from the presenters in hard numbers what the impact is from the wetlands. Without that information it would seem to Barry that the application was incomplete. That would be the bottom line what is the impact on the wetlands and without figures of the actual runoffs, I do not think the BOA could make a recommendation. Barry also feels that the Boards do not communicate enough.

Fiorelli said he disagrees with the engineer, there is 7 ½ gallons in a cubic foot not 5 gallons.

Ed Lamoreau stated that the wetland ordinance is pretty clear about impervious services.

Stenersen closed the hearing and the Board went into deliberation.

Stenersen asked to clarify how it was determined that it is a use Variance versus area Variance he is not disagreeing just doesn't know.

Carmichael said he looked at Section 5 that says prohibited uses. No building or impervious surface shall be established or expanded within 50 feet of the surface water.

Hill said we must maintain consistency in our rules. Carmichael said we will be setting a precedence here if we do this, Carguilo does not feel that a precedence will be set.

Carmichael said the Variance could be denied because the Variance is not consistent with spirit and intent of the ordinance.

Stenersen feels that we still should go item by item.

1. The Variance will/ will not be contrary to the public interest.

Carguilo feels that a paved surface is better Carmichael and Hill are opposed to it because of our wetlands ordinance. The Board found that granting the variance would not be contrary to public interest. SPLIT – 2/2

2. a) The use variance is / is not needed to enable the applicant's proposed use of the property. It was found that the applicant could use the property without the need for a variance, and he had agreed that a paved surface was not needed, therefore a variance is not needed. REJECTED – 4/0

b) The benefit sought by the applicant can / cannot be achieved by some other reasonably feasible method: The Board found that the applicant could still have a drive-thru without paving. PASSED – 4/0

c) The variance will / will not injure the public or private rights of others because: The Board felt that no rights would be injured. PASSED 4/0

3. The variance is / is not consistent with the spirit and intent of the Rindge Zoning Ordinance: The Board was SPLIT 2/2 so we cannot read that one out as a reason.

4. Substantial justice is /is not done by granting the variance. There is no public gain by either paving or gravel. REJECTED 3/1

5. Granting the variance will / will not diminish the value of Surrounding properties. The Board felt that there would not be any change in property values by granting the variance. PASSED 4/0

Carmichael made a motion that we not approve the Use Variance based on the above issues. Hill seconded it. Carguilo said because the benefit sought by the applicant CAN be achieved by some other reasonable feasible method, I am voting for the motion to make it a clean motion, but it does not in anyway mean that I would vote this way at another time. REJECTED 3/1

Minutes of the February 28, 2006 were approved as presented. Motion made by Hill and seconded by Carmichael – Motion was unanimous. Carmichael made a motion seconded by Carguilo to approve the minutes of the March 6, 2006 meeting after being amended. Motion was unanimous.

Carguilo made a motion to change the Appeal Date from 21 to 30 days and applications being received 3 weeks before the meeting. Hill seconded the motion. Motion was unanimous.

Voted to adjourn at 11:30 p.m.

Respectfully submitted

Helen Mae Olson  
Secretary