



## RINDGE BOARD OF ADJUSTMENT

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### May 23, 2006 Meeting Minutes

**PRESENT: Regular Members: Joseph C. Hill, MD – Chair, George Carmichael-Vice Chair, David Drouin, William Harper; Alternates: Marcia Breckenridge, Richard Feldman, Charles Phillips and William Thomas. Absent: Kathy Piehl – Regular Member**

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

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

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

Hill stated that he had e-mailed all members and alternates the following with which to be familiar: Sign Ordinances VI-C, and VII-A, RSAs #674:1, 674:21, 674:21a, 674:33, 674:33a, 674:35, 674:39, 674:43, 676:3 & 677:2. This is not in an attempt to influence anyone's vote, but simply to educate.

Hill polled all members regular and alternates:

1. Are you unbiased, and able to make a determination that is fair to both the applicant and the Town of Rindge? All members replied **YES**.
2. Are you familiar with the case(s) before you and have reviewed the information available? All members replied **YES**.
3. Is there any reason that you need to be recused from a case before us tonight for any reason (state reason), including financial interest, family or extended family interests or connections, or predeterminations? All members replied **No**, except Drouin recusing from FPC #950 as his wife works at the college, and Harper recusing from FPC # 950 as he does work for the college, and Tiensvold # 949 as he is an abutter.

Phillips will read all the applications and Feldman will read the pertaining RSAs and Ordinances for the case(s) before us.

**CASE #951: GFA Federal Credit Union, Appeal from an Administrative Decision, Code Enforcement Officer. Application for a Special Exception and Variance to Rindge Sign Ordinance, Article/Section VII, Paragraph A for a second sign on their building and off premise signage. Location 31 Sonja Drive, Rindge, NH – Map #6, Lot 99-6-1.**

**CONTINUED**

**Sitting Members: Hill, Harper, Thomas, Drouin and Carmichael**

Hill stated that one of the first questions that should be raised is that they are applying for both a Special Exception and a Variance. The members were asked what their opinion was as to whether it is a Use or Area Variance. Carmichael asked "what violations are they facing"? He was told that it is a prohibited use by the sign ordinance 7a. Hill said as he understands it from what David DuVernay wrote that they have applied for 3 signs. They have one at present on the front, they want one on the south side as well and then a third one which is the off premise.

DuVernay is not allowed to issue a permit for three signs. Hill believes that they need a permit (Special Exception) for a sign on the side of the building and then a Variance for the off premise.

DuVernay went over the memo that was sent to the BOA on 4/10/06. He also stated that the applicant said that the signs that DuVernay can approve will not be viewable from Route 202 south until a driver has traveled past the entrance. He is not certain that it is a use variance because clearly they are permitted to have signs so it may well be an area variance as to the location of the sign.

Drouin asked “are you saying because it is under the 7a reference, it should be a Special Exception instead of a Variance?” DuVernay stated under 6c they can request a Special Exception relative to size. They are only permitted to have one wall sign and one free standing sign.

Tina Sbrega, President of GFA Credit Union gave testimony on reasons why the signage is needed for their business. In brief, it is mainly due to the fact that there is visibility coming from Winchendon but not the other way. She also stated that they are very happy to be part of the Rindge area.

Kebby Lee Public Relations Officer from GFA Credit Union gave testimony in relation to the signage as well. She stated that in reference to the Directory Sign on Sonja Drive & Commercial Lane, they are only looking for identification. They would like to have a sign similar to the one across the street and also to get a second gable sign approved.

Hill said that the Planning Board held a Public Meeting on April 18, 2006 and completed its consideration and **APPROVED** the proposed off premise directory sign with the condition that the Zoning Board of Adjustment remand the application back to the Planning Board for final approval of design and location. We need to approve or disapprove an off premise sign and also to approve or disapprove a second gable sign and then it goes back to the Planning Board.

DuVernay explained that they property that is being talked about is Map 6, 99-5-1 where Taco Bell and Kentucky Fried Chicken is. Then we have 5-2 where Dunkin Donuts is and then 99-6-1. All of these properties are owned by Navian Development, so while it is an off premise sign it is an off premise sign on property that abuts and is owned by the same owner. It is really one complex and if it had not been broken up from a Map & Lot basis on the three properties, there would be no reason to be here except for the gable sign.

No one spoke in favor or opposition to this case from the audience.

Carmichael made a motion seconded by Drouin to begin with the Special Exception application first. The motion was unanimous.

Board went into deliberation:

Carmichael does not think it will create excessive traffic, it will crease less congestion because they demonstrated that in fact they are looking for signage on the edge of 202 to deal with confusion and traffic; this will make the traffic flow easier for those people who are looking for the entrance.

Thomas asked about other renters in the same building, would they have need to have a sign on the gable end as well, or does that not matter. DuVernay replied that we have no other application before you and the directory sign will deal with the other tenants.

Drouin mentioned that value of surrounding properties would be supported by paragraph 2, where they mention that there would be no need for U turns.

Carmichael stated that they have demonstrated that there is plenty of parking and that sewage or water concerns do not apply here.

Thomas said it will preserve the attractiveness of the Town. Drouin said it is pleasing to the eye per the drawings and pictures submitted. Harper said it will not exceed the existing signage and the signs are consistent with what is there. Drouin said also it is in character of public buildings, it is not neon city signs.

The Board determined:

1. The Board finds that the use **will not** create excessive traffic, congestion, noise, or odors. On this issue the applicant provided evidence that signage on the side of the building will help to direct traffic.
2. The proposed use **will not** reduce the value of surround properties. On this issue the applicant provided evidence that with proper signage there will be no adverse congestion at the other properties.
3. There **is** adequate sewage and water facilities and sufficient off street parking provided by the applicant. On this issue the applicant provided evidence that there is sufficient parking as demonstrated by their plan of parking. Water and sewerage concerns are not applicable in this case.
4. The proposed use **will** preserve the attractiveness of the Town. On this issue the applicant provided evidence that the signs are consistent with other signs in the area per the submitted pictures.

A motion made by Harper and seconded by Thomas to **GRANT** the Special Exception.  
The motion was carried unanimously.

#### **Deliberation on the Variance Application:**

Carmichael said he feels it is a Use Variance because they want to put a sign where it is not allowed. All sitting members agreed that it was a Use Variance.

Harper felt that it will not be contrary to public interest because it will help reduce congestion around surrounding properties. Thomas stated it will reduce possible traffic accidents on 202 for safety.

Thomas stated that they would probably lose business if no one can see the place.

Drouin does not believe that the financial part is our business; it is far from a hardship.

Harper said because of the topography it is not readily visible from 202.

Drouin read Section 1 of the sign Ordinances. - Purpose & Intent

Carmichael said they are improving safety by having the signs.

Thomas stated that substantial justice is done because they have this piece of property on which they are located and if we deny the Variance it is going to make them feel like they have made the wrong decision to locate there.

The Board determined:

1. The variance **will not** be contrary to the public interest because it will help in reducing congestion in the surrounding properties, increasing safety along route 202 and the access route.
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 place an off premise directory sign and this is a reasonable use due to the location and topography. A directory sign will increase safety. The property **has** a unique setting because of topography. It is not readily visible from Route 202.

- 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 is to protect the community attractiveness as outlined in Section 1 of the Rindge Sign Ordinance and granting this variance **will not interfere** with that purpose.
  - c. The variance **will not** injure the public or private rights of others, because the sign is compatible with community character, readable, clear, and no distracting to vehicular traffic.
3. The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance. The variance **does** **Not have** any negative impact on these considerations as it promotes safety and preserves the values of the Town.
4. Substantial justice **is** done by granting the variance. If the variance is denied, the applicant will be burdened because of the lack of full use of the property and there is no significant benefit to the town in denying the variance.
5. Granting the variance **will not** diminish the value of surrounding properties because it is in keeping with similar signs on abutting properties.

A motion was made by Drouin and seconded by Carmichael to approve the variance for off premise directory sign and that it be remanded back to the Planning Board per their request. The motion was carried unanimously.

**Case #952: Robert VanDyke, Appeal from Administrative Decision, Code Enforcement Officer. Application for Impact fees. Location: Taggart Meadows, Map #50, Lots 46 & 47. Rehearing. Sitting Members: Hill, Carmichael, Harper, Breckenridge, Drouin**

Harper did not understand why we are here for this case; it is a Planning Board decision. Hill said we issued a rehearing because of a decision that there application was originally late and was not complete, however they were told to send it in. Harper said he understands that, but there is no reason because the Planning Board has not accepted the application.

Attorney John J. Ratigan represented Robert VanDyke and gave testimony in reference to the impact fees in question. He referred to the Planning Board minutes of April 5, 2005 which stated that Impact Fees did not apply. He also referred to the June 7, 2005 minutes which stated that the above project would be exempt from Impact Fees. The Planning Board gave approval on July 6, 2005.

Carmichael asked if the Planning Board had the authority to waive the impact fees? DuVernay replied as far as he knows, they do not have the authority.

Ratigan went over the letter sent to the BOA on February 2, 2006 and several RSA's pertaining to the case.

Ratigan stated that for those projects who got vested rights prior to the provision of the statue, he doesn't believe we can reach back and capture all the subdivisions in town that received vested rights prior to the invested date of the Statutory Rights dated June 7, 2004. He feels that for projects that get vested rights after June 7, 2004, I think you can tap them in the future for impact fees because the legislature specifically carved out the exception of the statue.

Drouin asked what the application date was for Phase II. Drouin stated he has an approval date of 4-5-05. Ratigan wasn't sure if he had that information.

Ratigan said that this project had vested rights in 2001 and Carmichael asked what he meant by that. Ratigan stated that the Supreme Court says that when you get the substantial completion approval that is shown on the plan, you get vested rights. They do not give you a fine line as to when you get over it and when you don't get over it.

Drouin asked if Phase II existed in 2001. He was told it was the things that were shown on the approved plan.

Hill read **RSA 674.21, V - Section D** because in the past, you did not have impact fees. Hill stated that something that was approved in the past, before your project, does not hold water on this one. Once the impact fee ordinance was passed, they had every right to assess them. Ratigan said the Planning Board didn't have any right to say anything. Hill said the application was not final and Ratigan admitted it.

Hill said the application was not timely and the fee and abutters were omitted from the application. The only reason why this is a rehearing is because of what the Secretary/Clerk told you. Ratigan stated he appreciated that. Hill said you have to admit like you did last time, your application at that time was not complete.

Harper said we go at this all night and if we have a question for Ratigan we will ask him. Carmichael believes that the big mistake here is the Planning Board waiving the fees to begin with. Carmichael thinks that is the big issue in front of us. Harper stated if Ratigan wants to speak one more time and finish presenting his case great, but Harper does not want this to ping pong back and forth all night. Harper wants to stand with our Rules of Procedure on this.

DuVernay passed out a letter from Attorney Beth Fernald outlining the issues on this case. He read part of her letter and discussed it in detail. This also brought up **RSA 674:21, V - Section D**, as had Dr. Hill. DuVernay feels that Robert VanDyke knew that he would be assessed Impact Fees.

Robert VanDyke gave testimony on his case. He stated that he discussed this particular project with the Planning Board and was told that he would be exempt. He said that this project when approved in 1987 was phased over ten years. VanDyke said that it was never listed on the site plan that was done and it was never brought up even after he got his building permit. He got the building permit started building and expended much money, to the extent that there was about 25% of the site work that was completed and then he got the letter in January from Mr. DuVernay for Impact Fees. VanDyke stated there is a hardship here and that is why he is here tonight.

Hill said that the Planning Board did not have the authority to waive, and Town Counsel said they had overstepped. Hill said we just interpret the law we do not make it. Carmichael stated that our Town Counsel said this is applicable to projects approved before July 2004.

There were no comments for or against from the audience.

A motion was made by Harper and seconded by Carmichael to close the Public Hearing.

Board went into deliberation.

Harper believes that we have two choices, one is to go with the letter or if we are going to proceed with this serious conflict, Harper would like to see the plan that was approved, occupancy dates, etc. Attorney Fernald's letter is pretty clear. Do we want to table this and have them gather a lot of information to present to us or do we want to follow the Attorney's letter?

Carmichael said I think we all agree that the Planning Board made a mistake. Harper said he totally believes that, but he also believes, as VanDyke stated, that it was phased for a reason. They would not

Drouin stated that Section J addresses impact fees on a developer. Drouin also said that he does not see in the allow him to fill out his plan in one year. Harper said dates are very important in this case. Harper feels something was already imposed upon VanDyke between 1987 and 1997 and he wants to make sure that we do our do diligence to make sure that the Town is not double dipping. Harper feels he had to have an impact fee of some sort because he could not complete this project in a timely fashion. Harper is concerned about the overlap in Phase I and Phase II.

minutes where impact fees were waived. He said it doesn't look like it was voted on or seconded or anything like that, so he does not know what the strength is of those minutes when it is not in the Planning Board minutes of July 6, 2005. Drouin does not see where the Planning Board had any authority to waive the fees.

Breckenridge said we should go by Town Counsel's letter.

Hill stated that we either decide tonight to uphold DuVernay's decision or not. If we uphold it, the impact fees will be assessed, or they can appeal to Superior Court, or we can overturn it.

A motion was made by Breckenridge and seconded by Drouin to uphold a letter from David DuVernay dated 1/17/2006 that Impact Fees are applicable. The motion was 4-1 with Harper opposing. Harper opposed because he did not want to see the applicant being burdened twice.

**CASE #950: Franklin Pierce College, Application for a Variance for a Major Site Plan at College Road, Map 9, Lot 20 in the College District for the construction of a new treated wastewater effluent and filtration beds, force main and ancillary systems as upgrades to the existing wastewater treatment facility.**  
**CONTINUED**

**Sitting Members: Hill, Carmichael, Thomas, Phillips, Feldman**

Hill stated that we have a memo from the Conservation Commission, "finding that the proposed project will not detrimentally impact the wetlands. The project will improve water quality in the watershed area. We support approval of the project with possible improvement of the pipe system."

Phillips will read the Case and Feldman will read the Ordinances.

Marc Drainville, Project Engineer from Stearns & Wheeler made a brief testimony on the project and explained issues that were brought up at the May 16, 2006 meeting.

Nathalie Rice an abutter was concerned about the sand beds filtrating onto bedrock and flowing onto adjacent property. Drainville assured her that test borings and modeling showed the flow going toward the wetlands after filtration. Fiorelli also had the same concern as well as what plans were in place for discharging the effluent if a leak occurs.

Fiorelli asked how they would determine if there is a leak, whether it is a pipe within or pipe or whatever way they go.

Hill asked to have the odor situation addressed.

Paul McIntyre asked about the internal flow. Carmichael stated they addressed that issue last week. He said the general consensus was that flow meters are not accurate enough to pick up any flow bonds.

There being no further comments from the audience.

Motion made by Feldman seconded by Thomas to close hearing and go into deliberation.

Motion was unanimous

Phillips asked to discuss the detail of the case as to whether the property we are talking about is at College Road or at Mountain Road. Phillips believes that College Road is not the actual site of the project. Drainville stated he believes that the parcel is so large that they used the main address. Phillips said College Road is nowhere near where the site is because College Road is down by Pearly Pond. Drainville said in filling out the application they were not sure whether to use the actual location or the location of the parcel. Phillips stated that if you look at the parcel itself, it is on 9-20 but it is on Mountain Road not on College Road. To Phillips, College Road is incorrect.

DuVernay said that Phillips can talk to him at some other time about assessing records for the College.

Hill began using the Area Variance Decision Tree:

Carmichael stated that it is not contrary to public interest because they are going to clean up the effluent and they are discharging it away from the wetlands. Feldman stated it is a big improvement to the public interest.

Feldman said the variance is needed because it is in the 100' buffer.

The Board found:

1. The variance **will not** be contrary to the public interest because the effluent will be cleaner and not directly discharged into wetlands as is currently done.
2. Special conditions **do** exist such that literal enforcement of the ordinance results in unnecessary hardship:
  - 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 on this property are they are surrounded by wetlands and the area Variance **is** needed for this because there are no other suitable alternatives.
  - b. The benefit sought by the applicant **cannot** be achieved by some other reasonably feasible method because it is surrounded by wetlands and there are no other suitable alternatives.
3. The variance **is** consistent with the spirit and intent of the Rindge Zoning Ordinance. The intent of the Ordinance is to promote health, safety and welfare and to preserve the values and charm of the Town.
4. Substantial justice **is** done by granting the variance. If the variance is denied, the applicant **will be** burdened because they will be forced to continue to discharge into the wetlands, and there is no significant benefit to the Town in denying the variance.
5. The variance **will not** diminish the value of surrounding properties. Because this project will deliver a less polluted effluent to the surrounding waterways.

Conditions:

1. There will be redundancy with side by side pipes.
2. Monitoring wells will also include the South side in addition to the already planned monitoring wells.

The motion was made by Feldman and seconded by Thomas to **Grant** the area variance for Franklin Pierce College for this project, subject to listed conditions.

DuVernay said that Phillips can talk to him at some other time about assessing records for the College.

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  - b. The benefit sought by the applicant **cannot** be achieved by some other reasonably feasible method because it is surrounded by wetlands and there are no other suitable alternatives.
7. The variance **is** consistent with the spirit and intent of the Rindge Zoning Ordinance. The intent of the Ordinance is to promote health, safety and welfare and to preserve the values and charm of the Town.
8. Substantial justice **is** done by granting the variance. If the variance is denied, the applicant **will be** burdened because they will be forced to continue to discharge into the wetlands, and there is no significant benefit to the Town in denying the variance.
9. The variance **will not** diminish the value of surrounding properties. Because this project will deliver a less polluted effluent to the surrounding waterways.

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The motion was made by Feldman and seconded by Thomas to **Grant** the area variance for Franklin Pierce College for this project, subject to listed conditions.

The motion was 4-0 with Phillips abstaining

Phillips stated that he does not know whose fault it is, but he does not understand why we have to approve something that is not on College Road, or call it something that it isn't.

At this point the Public Hearing for May 23, 2006 was closed and this meeting continued with a Public Meeting and those minutes are on the tape for May 23, 2006.

### **Public Meeting**

**CASE #949: James I. Tiensvold, et al, Appeal from an Administrative Decision, Planning Board to Rindge Zoning Ordinance, Section 1, et seq.**

**Sitting Members: Hill, Phillips, Drouin, Feldman, Carmichael**

Carmichael is confused about this case and needs enlightening.

Hill passed out a letter from Attorney Gerald R. Prunier in reference to this case. There was a typographical error in the RSA's stated in the letter. The correct RSA is **676.5 - III**. Hill passed out copies of the correct RSA.

Hill's understanding of this case is that this is a Business / Light Industry area where the building was erected, it is totally allowed, and there are no zoning issues. If there are no zoning issues it does not become pertinent of this board. The only choice the applicant would have is to appeal to Superior Court, and Hill knows they have done that.

Hill stated we do not have to take testimony; it is straight-forward that we have no zoning issues in front of us. They are totally in their right to build that building in that area. Unfortunately, whether people like it or not, the land across the street is residential.

Carmichael asked DuVernay if he agrees with Hill's statement and DuVernay replied there is no zoning ordinance violations, and there is nothing we can do.

Attorney Perlow stated that we are coming to a conclusion without hearing his side.

Hill said with what DuVernay has told us and the application, he does not see a zoning issue. Carmichael said that the application is not complete, there is no description here, and asked what zoning law is being violated?

Hill stated we will take factual comments only from the audience.

Fran Gibsom the owner of the property stated that he was not notified of any of this being taken up tonight, so I feel no discussion should take place tonight. He found out by reading the paper. Harper stated that he had not been notified, and he is an abutter. Other abutters in the audience stated that they had been notified. Drouin asked the Secretary if certified letters had been sent out and was told yes according to the list of names that were given.

Attorney Perlow stated that he had notified Mr. Gibson by mail. Carmichael stated that is not how the process goes.

Attorney Perlow asked if the Board had read the actual appeal that was attached to the application and was told yes. Thomas stated if they have a grievous with the Planning Board decision, it does not have anything to do with us. Carmichael also said not all the abutters were notified.

DuVernay read RSA 676.5.

Harper stated it is our job to make sure that an applicant has the necessary help to give us what we need. So obviously, somewhere there is a failure on somebody's part, whether it was the applicant or the coaching staff sort to speak. The Board did not get what they need and without proper notification, you have to go to a time out.

Feldman stated that if we get an appropriately filled out application, we can take action but as of this moment it is premature.

Fiorelli said he does not believe that for a Public Meeting, the abutters do not have to be notified. In his opinion for the people who have sat here as long as they have, I think you knew who they were and I think it would have been courteous to suggest to them three hours ago, that we are not going to hear you tonight, but having sat here for this long and say sorry, we cannot hear what you are going to say and what the argument is, I think it is wrong.

Hill said we haven't agreed to hear the case, so we cannot agree to a rehearing. All Hill suggested, out of courtesy because they sat there for so long, that yes you can have a couple minutes to say where you think there is a zoning issue with factual information only.

Perlow said his concern was not that we were not going to hear the case tonight, but his concern was that you were debating amongst yourselves. He then proceeded to give testimony.

Carmichael stated he does not see where the Board has the authority to police the Planning Board decisions, since he sees no violation of Town Zoning laws.

Drouin is willing to give them the benefit of the doubt and give abutters a chance to prepare arguments also.

Feldman said we have a less than a complete record to deal with in terms of the allegations on paper before us. There are some legitimate concerns in that not all the abutters were notified. Feldman does not feel comfortable doing very much, they are certainly free to amend the process and do it right and then see what it looks like.

Hill stated that in a Public Hearing everybody must be notified by certified mail, under a Public Meeting it does not have to be, it just needs to be posted. There is a big difference.

Feldman asked is it a Meeting because it is the initial appeal to a decision. Hill replied it is a decision to see whether we have any jurisdiction or not and with no zoning laws having been violated, I think the ZBA does not have the authority to hear this. I believe it has to go back either to the Planning Board or to Superior Court.

Thomas stated it is not our job to police the Planning Board, if they made an improper decision about a zoning issue, then that is one thing but for us to rule on whether they made their decision correctly and there certainly has been allegations and Thomas understands that, but I think Superior Court is the way to go. They are doing it anyway.

Hill feels it would be safer to stay out of this one.

Phillips stated in the absence of what zoning ordinances are up for grabs, I can see doing nothing.

Drouin said in the interest of the Town, abutters and land owners I think we should hear it. Carmichael does not think we should hear it. Feldman does not feel it rises to the level that we should take this on. Phillips agrees that we should not hear it

**In case #949, the Board decided not to hear the case due to the fact that no violations were presented To the Board.**

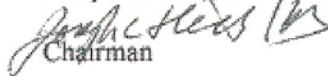
**The vote was 4-1 with Drouin opposing.**

A motion was made by Carmichael and seconded by Harper to approve the minutes of May 8, 11 and 15 after being amended. The motion was unanimous.

**Meeting adjourned at 11:00 p.m.**

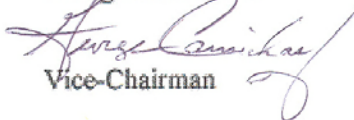
Respectfully submitted

Joseph C. Hill, MD



Chairman

George Carmichael



Vice-Chairman

Helen Mae Olson  
Secretary/Clerk