

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
May 7, 2013**

DATE: May 7, 2013 TYPE: Public Meeting APPROVED: June 4, 2013

TIME: 7:00 pm

CALL TO ORDER:

ROLL CALL MEMBERS: Chairman Kirk Stenersen, Vice Chair Kim McCummings, Hank Whitney, Phil Simeone, Bruce Donati, Charlie Eicher

ROLL CALL ALTERNATES:

EX OFFICIO: Roberta Oeser

PLANNING DIRECTOR:

PLANNING SECRETARY: Susan Hoyland

APPOINTMENT OF ALTERNATES

OTHERS PRESENT: Sharon Rasku, Peter Imse, John Kucich, Matthew Snyder, Steve DeCoursay, Holly Koski, Alan Harvey, Betty Commerford

1. ANNOUNCEMENTS

Vice Chair Kim McCummings said that the Farmer's Market will be opening on Thursday May 16th from 3:00 pm to 6:00 pm and every Thursday thereafter through Columbus Day.

2. APPROVAL OF MINUTES

a. April 16, 2013

MOTION: Roberta Oeser moved to approve the minutes of April 16, 2013. Phil Simeone seconded the motion. **Vote: 6-0-1** Kirk Stenersen abstained (as he had recused himself for part of that meeting).

3. NEW BUSINESS

CONCEPTUAL CONSULTATION with Matt Snyder, Sulloway and Hollis, representing Wal-Mart. (15 minutes) (Map 6 Lot 98)

Peter Imse, Sulloway & Hollis Counselors at Law, addressed the board. He introduced his associate, Matt Snyder, stating that he and Mr. Snyder will be representing Wal-Mart on this project. Mr. Imse then introduced Steven DeCoursay and John Kucich of Bohler Engineering who will be engineering this project.

Peter Imse said that an application for Site Plan Review was made in 2011, but due to some difficulties with septic issues coupled with economic concerns, the project was put on hold. A decision to move forward at this time has been made. He said that the purpose for coming here tonight is to start this process over again.

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Mr. Imse invited Mr. John Kucich (Bohler Engineering) to present the project. Mr. Kucich said the project today is very similar to where it was left off in 2011. They have addressed some concerns expressed by the Planning Board in 2011. Those were:

Potential of cut through to the parking lot: Mr. Kucich said that they have added some longitudinal islands as well as some additional end cap islands to address this concern.

Location of wastewater treatment plant and leach field: Mr. Kucich said that back in 2011, during site plan review, material on the site was suspect. This concern proved valid. Some test pits have been dug and the location of the wastewater treatment plant has been relocated to the back, hiding it behind the building. Based on initial testing, the leach field will remain where it is today.

A question and answer period briefly addressed the following topics:

- Parking
- Size of addition (+/- 42,000 sf)
- Outside storage
- Wetlands issues/wetland permits./wetlands buffer
- Tree buffer will be maintained
- Replacement of signage on Route 202 (to be referred to Operations)
- Changes/appearance - front of the building
- Fire lane
- Storm water run off
- Change to road
- ConCom
- Waiver for green space/impervious surfaces
- Phased make-over of store
- Distance from proposed septic to wetlands to be determined

Chairman Stenersen thanked the applicants for coming before the board.

<p>CONCEPTUAL CONSULTATION with Brent AuCoin, Rindge Mini Storage 29 Commercial Drive to add portable storage units to existing site. Tax Map 6 Lot 99-4, Business Light Industry District. Is site plan review needed? (15 minutes)</p>
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As Mr. Brent AuCoin was not in attendance, it was determined that the Planning Board would review the information that the Planning Secretary had provided from her brief meeting with Mr. AuCoin.

Chairman Stenersen outlined the limited information that was provided: Four 6x10 or two 10x10 portable storage units would be added. After a short discussion, it was the consensus of the board that additional information would be needed from Mr. AuCoin prior to making a determination if Site Plan Review would be necessary.

CONTINUATION of a Public Hearing from April 2, 2013 for a Technical Subdivision submitted by William and Barbara Hughes and Terry and Sandra Files. The property is located at **Tax Map 7, Lot 15-3-1** and Tax Map 34, Lots 2 located on Red Gate Lane and Emerson Lane in Rindge, NH. The applicant is seeking approval for a technical subdivision.

Mr. Dick Drew introduced himself as representing the Hughes and the Files for this application for technical subdivision. He is here for approval of a technical subdivision, to transfer ownership of a 4,178 sf strip of land from the Files to the Hughes. During the last meeting, abutters questioned what would happen to the easements that existed on this piece of property. Mr. Drew said that nothing will happen to them, they go with the land, regardless of who owns the land. Easements and Right of Ways do not change by a transfer of ownership. Mr. Drew said this plan tonight differs from his originally submitted plan as he has added easements as requested.

Holly Koski said that she had plans showing a right of way going through the Hughes's property. Roberta Oeser said that the deed did not delineate the foot paths and while she wondered why it is no longer on his land, it is not delineated on the deed and therefore, cannot be shown on the plan in any specific location.

Roberta Oeser said that the Planning Board has no authority to enforce right of way usage. It has nothing to do with the transfer of ownership. Holly Koski said that Mr. Drew had been asked, at the last meeting, to put all three easements on his plan. Alan Harvey said these right of ways existed prior to Mr. Hughes building his house. Dick Drew said he does not doubt that at all.

Dick Drew said he can only show on the plan what appears on the ground today. He cannot go back in time nor certify the location of something that is not there. If there is an issue with the easement that takes place on the Woods Road, it is outside of the scope of the Planning Board and the application before it this evening.

Chairman Stenersen said that the Planning Board has no enforcement authority. If you have the right to pass and repass across a piece of land, you have that right. Who owns that land makes no difference. The difficulties that are happening in the Red Gate Lane neighborhood would be a civil matter and outside of the Planning Board's jurisdiction.

Holly Koski asked if the planning board could include the following statement as a condition of this approval. "This does not constitute or cannot be construed as waiving any Right of Ways that currently exist..."

Dick Drew said that that is inherent. Holly Koski said she wanted to make sure Mr. Hughes knows that. Dick Drew said that Note 2 on his plan listed deed references to easements and that nothing Mr. Hughes or he could do would change that without consent from those who have access to those easements. You would have to give up those rights to change this.

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Alan Harvey, 158 Red Gate Lane said that he consulted an attorney on this issue. The key issues that came up included:

- The use of the term “lot line adjustment” as opposed to subdivision
- There are three warranty deeds. He asked Mr. Drew to check those on his plan. There was discovery of an error of a deed reference number on Mr. Drew’s plan in the “owners section”. (which will be corrected prior to submitting the Mylar) (Note 3 shows all three deed references correctly)
- Types of deeds including deed without covenants (being the lowest form of a deed)

Chairman Stenersen read the definition of a technical subdivision from the Town of Rindge subdivision regulations. A boundary line adjustment is a technical subdivision per Rindge regulations.

Alan Harvey asked if the Planning Board could subdivide a piece of land that was conveyed via a deed without covenants.

- Roberta Oeser said that they are conveying whatever they own, if they own it; -that the deed without covenants says they cannot guarantee that they own anything,... but if they do, they are conveying it.
- Chairman Stenersen said that we can approve a subdivision based on a quit claim deed or deed without covenants. Roberta Oeser said that the Planning Board must depend on the information that is provided to them by the applicant.

Mr. Harvey said it was his intent to clarify the easements and rights of way that exist. He offered copies of deeds and letters to the board. He said he was happy that this decision by the planning board would not do anything to change the rights of people to use the easements and rights of way.

Holly Koski thanked the board for having the easement shown on Mr. Drew’s plan as part of the approval process.

Betty Commerford said that she was in possession of a plan that showed Red Gate Lane going through her propane tanks. She asked that Mr. Drew not endorse that plan in his findings. Mr. Drew had not.

Chairman Stenersen closed the Public Hearing.

The Planning Board decided to include the following three conditions as part of the approval for this subdivision.

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1. Prior to recording the final plat, a zoning statement shall be added explaining that while Map 7, Lot 15-3-1 does not conform to the 2 acre minimum lot size, the lot is more conforming than had existed prior as a result of this lot line adjustment.
2. This subdivision remains subject to any previous conditions placed on it by prior Planning Boards.
3. Deed references in property owner certifications will be updated to proper deed references.

MOTION: Roberta Oeser moved to approve the Technical Subdivision as presented with the aforementioned three conditions. Phil Simeone seconded the motion. **Vote: 7-0-0**

Chairman Stenersen recused himself for the next hearing and Vice Chair Kim McCummings took over the meeting.

CONTINUATION of a Public Hearing from April 16, 2013 for an application for Site Plan Review submitted by Tim Halliday for a proposed diner to be located at Tax Map 6, Lot 17-1, 1421 NH Route 119 in the Gateway Central District.

Vice Chair Kim McCummings invited Kirk Stenersen to take the floor on behalf of Tim Halliday.

Mr. Stenersen said that, during the last meeting, a request had been made to provide dimensions of the diner. Those have been submitted. There was also a request for a letter from John Hill (neighbor) as to the shared driveway. Mr. Halliday has made several attempts to call Mr. Hill and has been unable to speak with him. He has decided to eliminate that driveway from the plans and make a turnaround after the last two parking spaces so that cars can turn out and be on their way. This change is reflected on the new plan. No written agreement will be needed from Mr. Hill. The DOT driveway approval has been received and Mr. Stenersen is still waiting on the wetlands approval which should be no later than May 26, 2013. Septic approval is still pending. The dumpster has been moved to a new location as shown on the revised plans.

Mr. Stenersen read into record a memo from Dave Duvernay, Code Enforcement.

5/3/2013

MEMO TO: Rindge Planning Board
FROM: Rindge Code Enforcement Officer
RE: Hometown Diner proposal
Map 6 Lot 17-1

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Among other considerations:

1. The yard setback in the Gateway Central District to an abutter's property line is 10 feet "unless the abutting property is a residence ... in which case the setbacks shall be fifty feet..." We show the abutting property is a two-family residence owned by JPH Development Co., LLC (See Article X, Paragraph C, subparagraph 2). I believe the plans show a 10-foot setback in error.

Article X, Paragraph C, subparagraph 3, c, also allows the Planning Board to modify the density, frontage, yard, area and open space requirements.

2. Rindge Sign Ordinance prohibits:
 - a. Roof signs (Section V, paragraph N)
 - b. Internally illuminated signs ... (Section V, paragraph Q)
3. New Hampshire case law (New Ipswich case) stipulates that if the Planning Board approves a Plan in which a sign and location are set forth, the sign cannot later be unapproved. We should use caution in dealing with signage.

David E. DuVernay

Kirk Stenersen said that it was his understanding that this abutting property is a mixed use property housing a business (accountant) as well as rental apartment(s). As the Gateway is a mixed use district, it was his understanding that a residence would be a single family home, but as this is mixed use, he used the 10 foot setback. Mr. Stenersen said it really doesn't make a difference as the diner is just under 54 feet from the property line, but he is showing a 10 foot setback on his plans. Should the board's interpretation differ from his, he would need to show a 50 foot setback on his plan. He asked for the board's decision on this.

Vice Chair McCummings said that our ordinance is not terribly clear. It should not have a negative impact on this case. The intent of this ordinance was as a mixed use district. Kirk Stenersen said that he viewed this language as a "residence" which would mean a single family home and not as a "residential use". Charlie Eicher said that after reviewing the ordinance, he believes the 10 foot setback is within the intent of the Gateway district as a mixed use zone. After some discussion, the Board agreed with the interpretation to be considered 10 foot setback. The Board agreed to have this language reviewed when we have hired a new Planning Director and can bring a change of wording for clarity to be considered and put before the voters.

MOTION: Roberta Oeser moved to consider this to be a 10 foot setback. Charlie Eicher seconded the motion. **Vote: 6-0-0**

Kirk Stenersen representing Tim Halliday spoke to the Hometown Diner Sign. He showed the board the picture of the dining car that will be coming. The sign is on the roof of the dining car, which is basically 1/3 of the building footprint. Two-thirds of the building footprint is a sixteen foot roof, which is higher than the sign. So, if that sign on the dining car were attached to the wall instead, then it would meet the ordinance. Mr. Stenersen said, if we are dealing with the intent of the ordinance, then this sign would be below the roof line.

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Vice Chair McCummings said she could not speak to intent as she was not in the room when the Rindge Sign Ordinance was drafted. Hank Whitney spoke to the intent of the ordinance and said that something sticking up in the air higher than the roof would not be approved. He said that this sign would be in keeping with the Master Plan and could be attached to the wall.

Mr. Stenersen said, (reading from the sign ordinance): “ *A roof sign is a sign that is erected, constructed and maintained above the eave of the building except when placed on a gable façade or a gable end of a building. This includes any painting on the roof of a structure or design in the roofing material which effectively constitutes a sign.*”

The Board discussed this and several members said that, if the sign were attached to the front of the building, it would not then be a roof sign.

The Board then discussed the internal illumination of this sign and agreed that a condition of this approval would be to go before the ZBA to seek relief via a variance for the internally illuminated sign.

Vice Chair Kim McCummings asked if there was a way to light this sign without the internal illumination. Phil Simeone asked if this sign would be lit all night. Tim Halliday said that this sign is not an extremely bright sign. It is gentle illumination.

Tim Halliday said he may need to get a variance for the size of the sign as well as illumination and he will seek that.

Bruce Donati asked if the diner will be handicapped accessible. Mr. Halliday said that it will be. Bruce Donati asked about the pitch of the roof which has a slight pitch. Bruce Donati asked if the new addition would be painted. Mr. Halliday said right now it is vinyl sided and he will do something similar. Bruce Donati asked if perhaps some of the colors from the lighting could be used for the siding on the addition, - to ‘brighten up’ the appearance.

The Board then discussed their recommendations for conditions which were:

1. The attached hometown diner sign requires ZBA approval.
2. Construction is subject to Impact Fees.
3. Approval is subject to state required approvals.

Vice Chair McCummings said she did not have anything in writing from Rick Donovan and asked Mr. Halliday for his input on that. Mr. Halliday said that Rick Donovan had no issues with this plan and whatever else was required, would come up during the building permit process.

Vice Chair McCummings opened the Public Hearing.

Comments from the public were in support of this application. Those in attendance were appreciative of the addition of a diner in the Town of Rindge.

Vice Chair McCummings closed the Public Hearing

MOTION: Roberta Oeser moved to approve the site plan review for the Hometown Diner with the following three conditions. Charlie Eicher seconded the motion. **Vote: 6-0-0**

1. The attached hometown diner sign requires ZBA approval.
2. Construction is subject to Impact Fees.
3. Approval is subject to state required approvals.

Members of the Board and of the audience thanked Mr. Halliday for bringing this diner to the Town of Rindge.

Chairman Stenersen returned as Chairman.

5. PLANNING DEPT. REPORT

a. Alternates: Chairman Stenersen asked members to continue to look for residents willing to serve as alternates. He told the Board that Holly Koski had sent a letter of interest to be considered as an alternate. It was decided that those seeking alternate positions would come before the board on June 4th for consideration.

b. RFQ for Consultant for Part Two for the CPG grant: Chairman Stenersen updated the Board on the activity thus far on the CPG grant. It will be necessary to keep track of hours spent on this by board members, as this will go toward part of the matching fund requirement.

c. Budget discussion: Kirk and Kim updated the Board on their budget discussions with Carlotta. The BOS and BAC are looking for deeper budget cuts. Kim McCummings and Bruce Donati will attend the next meeting of the BOS/BAC.

6. . NON-PUBLIC SESSION per RSA 91-A: 3IIb for Personnel Matters

The Board decided to not enter Non-Public session at this time.

Adjourned at 9:45 pm

Respectfully submitted,

Susan Hoyland
Planning Secretary