



## RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD, PO BOX 163

RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964

www.town.rindge.nh.us

### **MEETING MINUTES: March 27, 2012 APPROVED**

Present:

Regular members: Janet Goodrich (Chair), Dave Drouin (Vice Chair), Marcia Breckenridge, Phil Stenersen, Bill Thomas.

Alternates: Joe Hill and Rick Sirvint

Absent: Charlie Eicher - excused

Recusals: None

The meeting convened at 7:00pm with the Pledge of Allegiance.

#### **John Heikkanen / Case #1038:**

**John Heikkanen, 707 Old New Ipswich Road, Rindge, NH 03461, Map 7 Lot 91, for a Variance from Article V, Section B-1 of the Rindge Zoning Ordinance which requires 250 feet of frontage for a lot with a building.**

Hill read the case before the board and Sirvint read the related ordinances.

Richard (Dick) Drew, licensed surveyor, spoke before the Board: "The owner's best use of this land is as a building lot; he is not a farmer".

Thomas: "So he's leaving a 2-acre lot for the house"? Drew: "Yes. Putting a home on here requires that we subdivide the lot".

Sirvint: "This house is not on the historical register now. And I don't think the age of the house is a factor in determining its historical value". Drew: "We feel it does have historical significance as an old farm house that's been there since 1787".

John Heikkanen: "The State of NH said they will register it as a historical structure. The floors are still from the 1780s".

Drew: "The proposed use is a reasonable one because 24 acres is reasonable to support two homes, leaving two acres for one house. As far as being consistent



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with the spirit and intent – 181’ is enough to put a driveway into a new lot. The worst-case scenario would be to use the existing driveway to access the proposed back lot. We do have to remain close to the center of the lot – the topography is tough on the lot, steep”.

Drouin: The intent is to allow 250’ frontage”. Drew: “I think 181’ feet still gives you safe access. A driveway is 20’ wide and you don’t need 250’ feet. I don’t think the ordinance is directed at density”.

Drouin: “Part of it has to do with the size of the lot – so you don’t have driveways every 25’. We have properties with a 17’ driveway and 200+ feet elsewhere due to wetlands, etc”. Drew: “Is the intent of the zoning ordinance for density? I think it’s for safe access to the lot”.

Sirvint: “Would you say that any person that has less than 250’ should be able to build a house based on that argument”?

Drew: “If you have two acres of land, sure, I’d say that. I’m not a great believer in having driveways every 250.’ I’m more in favor of cluster zoning. The proposed house will be about 400’ behind the existing home on fairly flat, level ground”.

Stenersen: “I know our zoning is pushing for houses clustered closer together because when you have 250’ of frontage, it creates sprawl. In my development, you have 100’ of frontage minimum. I think you’ll see that the Planning Board in area towns are saying that for every 250’ of road, you have only one house paying taxes when we could have two houses, and then reserve the rest of the land for wildlife corridors”.

Hill: “Under the new law, the historic register designation is pertinent”.

Drouin: “We don’t have a waiting condition for the historic register designation yet. It seems too bad that a historic farmhouse is only being relegated to two acres”.

Goodrich: “If you think of typical building lots, its two acres, but this is 24 acres”.



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Sirvint: “There has to be something that demonstrates it threatens health, safety, or welfare or alters character of the neighborhood. The neighborhood in the photograph seems rather rural. I find that it’s more supportive of your argument than the size of the property”.

Drouin: “There are only two requirements: that the lot be two acres minimum and the frontage be 250’. We can’t tell the intent or purpose of this ordinance”.

Drew: “With 169 feet to access a single home, I don’t think it violates the spirit of the ordinance or adds density. The builder can’t build on the lot without a variance”.

Peter Dufresne – 17 Old New Ipswich Road:” I have 9 acres; and every 50 feet the Fire Department requires some kind of numbering”.

DuVernay stated that he had sent an email out to everyone. DuVernay: “The Planning Board passed Mr. Heikkanen’s case on to the ZBA”.

John Heikkanen: “They thought this would be the perfect scenario to decide on back lots”.

Sirvint: “The ZBA has to determine unnecessary hardship. What distinguishes this property from others”?

Drew: “The lack of frontage for such a large parcel”.

Sirvint: “Are there similar properties”?

Breckenridge: “The owner’s not wanting to destroy a historic house in Rindge (whether it’s on the historic register or not) makes it unique”.

Sirvint: “This says the property is a rental property, so the whole property is being used”.

DuVernay: “ The question is whether this a reasonable use of the property. Does it satisfy the spirit and intent of the ordinance? Hardship does come from the fact that in the front part, where the frontage is, there’s already a building there”.



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Sirvint: “You may find unnecessary hardship only in relation to other properties”.

Hill: “But if you don’t grant the variance, he can’t use the rest of the property to build a second home, and he needs access to the rest of the land because he wants to keep the original house intact”.

Goodrich: “Is there something unique about this property? If not, we would have to prove that the proposed use is not a reasonable one”.

Hill motioned to move to deliberative session. Stenersen seconded, and all were in favor.

### **Deliberation:**

The variance use would / would not be contrary to the public interest because:

Drouin: “Would not” because it would allow only one house lot on 26 acres (above the 2-acre minimum)”.

Goodrich: “It’s not the typical 200’ on the road and a two-acre parcel. It’s a dwelling on 24 acres with a 100’ setback. The lot has a different appearance. The ordinance didn’t want little box lots all along the road and this doesn’t do that”.

Drouin: “The law does allow two-acre lots – it misses the frontage requirement by 25%. The property has a reasonable use history and this is a different use. The single home had been used as such, and now they want two houses that will violate the ordinance – size and frontage are the only requirements of the ordinance. You could argue that a lot of residences in Rindge could put more houses in the back of their lots in res/ag developments. This is going to set a precedent”.

Breckenridge: “You have a 24-acre lot, and that’s well within the spirit and intent of the ordinance in keeping it residential/agricultural and rural. And you have a historic house that’s livable evidenced by the fact that he’s renting it, and I don’t think it’s within the intent of people who want to keep this a rural area to tear down the existing, only house that’s usable when only one more house on 24 acres is being proposed. The intent seems to be the density. It’s not asking for five acres, it’s only for one more house on 24 acres, not a bunch of Monopoly houses”.



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Drouin: “If the farm house is on 2 acres, you’ve lost the “ag” of the res/ag right there. If our concern is losing the nature of the existing house –“

Breckenridge: “I think the house is of value in and of itself”.

Drouin: “This is a frontage and area variance; the house is lived in and the threat to the home is from the new landowner who knew that lot wasn’t sub dividable”.

Breckenridge: “The only way he can get the required frontage is to demolish that house and he clearly doesn’t want to”.

Drouin: “We have the area; the only variance is frontage which is 25% short”.

Thomas: “I’m kind of on the fence because I see Dave’s point, but putting another house here doesn’t mean that it loses agricultural property – the one in the back can farm as much as the one in the front could. I don’t think that we need to be concerned about tearing the house down; that’s not our business—it’s his loss if he considers it to be of historic value. It’s our job to protect the ordinances as they’re written. But it doesn’t seem like an unreasonable use to put a driveway in to have a second house back there, so I’m really torn about the whole thing”.

Stenersen: “I’m reading the unnecessary hardship conditions and it talks about that this only has to be a reasonable use of the property given its special conditions. I think the shape of the lot is a reasonable use. Also, the special conditions could be placed upon the land (i.e., its historic value)”.

Goodrich: “The Supreme Court has come down with new interpretations”.

Drouin: “It’s a neighborhood of short frontages. The lot next to it is narrow as well. If you take some of these other deep lots, you would set a precedent”.

Goodrich: “From my perspective, it would not be contrary to the public interest”.

Thomas: “I don’t think you can come down hard on this”

**A variance can be granted only if an applicant satisfies all five variance criteria. The Board found that:**



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**1. The variance use would not be contrary to the public interest because:**

It doesn't alter the essential character of the neighborhood or impact the density of the neighborhood (which consists of narrow frontages), or threaten the public health, safety, or welfare.

Vote: Unanimous

**2. Granting the variance would do substantial justice because:**

The proposed variance would not diminish property values, and no loss to the individual caused by denying the variance would be outweighed by a gain to the general public.

Vote: Unanimous

**3. The variance would be consistent with the spirit and intent of the Rindge Zoning Ordinance because:**

It does not detract from health, safety or welfare and it preserves the character of the Town.

Vote: Unanimous

**4. Granting the variance would not diminish surrounding property values because:**

It is consistent with the character of the neighborhood.

Vote: Unanimous

**5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship.**

The unique special condition is that the depth and width of the lot allow a second home that will not be seen from the road and granting the variance for the new lot will not therefore alter the character of the neighborhood.

Vote: Unanimous



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**a. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provision(s) to the property because:**

It does not detract from health, safety or welfare and it preserves the character of the Town.

Vote: Unanimous

**b. The proposed use would be a reasonable one because:**

The property owner cannot pursue a reasonable use of the property if strict enforcement of the ordinance is pursued. A variance is necessary to reconcile the minimum frontage required by the ordinance that is too low and is imposing an unnecessary hardship.

Vote: Unanimous

**Variance Granted because:**

The five criteria have been met.

Vote: Unanimous

Concerning the application for Appeal of Administrative Decision by Sunridge, which was to occur in the April session, the neighbors have requested an alternate date for the hearing since some of the neighbors will be away due to school vacation on the ZBA's next regularly scheduled meeting on April 24<sup>th</sup>. A Board member suggested that we should have the Town's legal counsel here during that hearing.

MOTION: Drouin motioned that the Town's legal counsel be here for the Sunridge hearing. Breckenridge seconded, and all were in favor.

It was suggested to schedule a special meeting for the Hunt/Sunridge case on Thursday, May 10<sup>th</sup>. Keep the regular April, 24th meeting for another case, if there is one, and / or the Board Public Meeting for organizational purposes. If the Hunt/Sunridge case is extended, it can resume on the ZBA's next regular May 22<sup>nd</sup>, regular meeting, and if another case comes in in May, the ZBA can schedule that for June.



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The Clerk will get back to ZBA on what meeting rooms are available on May 10<sup>th</sup>.

### **Second Reading of the proposed change to the Variance Decision Tree:**

Hill: There is one edit on number 3: get rid of underlining under “be.”

Stenersen: 5b is all tied together on the variance application and on the variance decision tree but it reads entirely differently. If you don’t understand the decision tree.... If 5b is changed and clarified, it might possibly change our application 5b. I think we want this clarified by our attorney and potentially make adjustments to our application 5b.

First reading approved, and clarification requested on 5b.

Drouin moves that Hill get in touch with Attorney Kinyon to clarify 5b (interpretation of “Alternatively”) and we wrap it up at the April business meeting. Seconded by Goodrich. Vote Unanimous

### **First reading of proposed Rules of Procedure change**

MOTION: Stenersen motioned to amend the Rules of Procedure to say that the ZBA shall elect the Chair and Vice-Chair at the first meeting following Town elections. Drouin seconded. Vote: Unanimous

A discussion of fee application review every April. Dave Drouin stated that the ZBA might consider flat fee plus per-abutter fee. The Planning Board has a flat fee of \$ 75 plus \$5-10 for registry plus \$10 per abutter, fees beyond scope of the norm, lawyer’s fees, outside experts.

Goodrich made the Motion to table financial discussions until next budget cycle. Hill seconded. Vote: Unanimous

First reading of proposed Variance Application emailed by Hill. Attorney clarification of 5b will be requested.

We’ll do second reading next time.



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Approval of February, 2012 minutes – one correction on Page 7 third paragraph up second to last sentence – the lot slopes and it's 1.25 acres – it's supposed to be "1.52" acres.

Breckenridge motioned to accept the minutes with that correction. Stenersen seconded. Vote: Unanimous

Thomas and Drouin will be the reviewers for April. The date for the session is April 24, 2012 and the cutoff date is Tues. April 3, 2012 at 4:30 PM.

At 9:15, Marcia motioned to adjourn, Jan seconded, and all were in favor.

Minutes respectfully submitted by:

Joe Hill, Alternate

Linda Stonehill, Clerk

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Janet Goodrich  
Chairman

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David Drouin  
Vice Chairman