



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

MEETING MINUTES: October 23, 2012 Approved November 27, 2012

Regular members: Janet Goodrich (Chair), Dave Drouin (Vice Chair), Marcia Breckenridge, Bill Thomas,
Alternates: Joe Hill, Rick Sirvint
Absent: J. Forbes Farmer, Phil Stenersen
Recusals: None
ZBA Clerk..... Susan Hoyland

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

Summary by Janet Goodrich (Chair): For those who have not attended or appeared before the ZBA, we have five voting members and the meeting is in two sessions. In the testimony phase, members of the Board, both alternates and regular members, as well as members of the audience are free to participate. Once the Board goes into deliberative session, then only the five individuals who are sitting on a particular case will participate in the discussion

Janet Goodrich: This evening Phil Stenersen is not present and Joe Hill is the alternate who will be sitting in his place

Sitting on this case were: Janet Goodrich, David Drouin, Marcia Breckenridge, Bill Thomas, Joe Hill

Janet Goodrich: At this point we will open the Public Meeting. The case before the board is Case #1047. Rick Sirvint read the case.

Case # 1047: Sunridge Neighbors: John & Heidi Graff, 111 Sunridge Road, Rindge, NH 03461; William & Maryann Harper, 154 Sunridge Road, Rindge, NH 03461; Donald & Liza Pyke, 22 Sunridge Road, Rindge, NH 03461; William & Shirley Preston, 77 Sunridge Road, Rindge, NH 03461; Timothy & Susan Wessels, 182 Sunridge Road, Rindge, NH 03461: Motion for rehearing because the Decisions of the Rindge Zoning Board of Adjustment dated 8-28-2012 in cases # 1039 and 1043 are unlawful and unreasonable. The Hunt's 'Castle' is a business in a residential zone and absent a variance, that use is not permitted. The Zoning Board of Adjustments' Decision exceeds its statutory authority.

Janet Goodrich (Chair) asked for questions and comments from the Board members and reminded the audience that during a Public Meeting, discussion is limited only to Board members.



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD

RINDGE, NH 03461

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

www.town.rindge.nh.us

Bill Thomas: The way I look at this application, the applicants are crossing all their T's and dotting all their I's and doing everything necessary. I think this case is probably heading for court and they are taking all the steps that they need to take to move this process along. I don't really think there's any merit to the application. We, as a board, have deliberated and made our decision and I do not believe it should be opened for a rehearing.

Marcia Breckenridge: I would agree. The only reason to open this up would be if there were new evidence or if we were in violation of some ordinance or law. I am not aware of any new evidence. My whole point all along has been that the Zoning Regulations do not have a specific definition of business. We are not in violation; we are doing what we are supposed to do, not defining terms that are not defined by the voters. I totally concur with Bill Thomas.

Bill Thomas: We deliberated, we were not unanimous, and it was a majority vote.

Marcia Breckenridge: I think we did the best job that we could.

Janet Goodrich (Chair): The application focuses on the general issues. We have had another application for a rehearing and at that time, we as a Board said that there were no procedural errors and that our decision would stand. This seems to be an application for the same request, under the same circumstances. We've already voted once to deny a rehearing. There were no procedural errors and the Board was appropriate in its actions.

Marcia Breckenridge: We have not been informed of any new evidence?

Janet Goodrich (Chair): No

David Drouin: I think the application is not claiming that there were procedural errors nor new evidence, but it is claiming that the decision has resulted in the error by finding that it is not a business. They are claiming that it is a business and therefore, relief has been granted to run that business. I voted in the negative. I think it is a business and therefore you have granted a variance. I made that argument on the 10th and the 14th that you were giving relief. I also think that, by putting the conditions you did on it, that you support the argument. I've argued this before. If it is a residence, why are you conditioning it? This is the first time since I've been on the Board, since 2005, that I've seen a residence conditioned. I think the Board made a mistake. The mistake is as a result of the decision.

Marcia Breckenridge: It sounds like your saying to me that one party did not care for the decision so the decision is a mistake. This sounds like a circular argument.

David Drouin: All I'm saying is because I saw this as a business, and you are allowing it, that you are granting them relief. You are not allowed to because there was no application for relief. And because you conditioned it, as you would a Special Exception or a Variance, it only supports the argument that it is a business.

Janet Goodrich (Chair): I disagree with you on that piece, because we are allowed, by law, to put conditions.



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

David Drouin: I didn't say you are not allowed to, but look at the conditions. You are conditioning a residential use. If it is a residence, why do you need to condition it?

Joe Hill: Certainly there is no new evidence presented at this point. Secondly, I don't think their claim is valid, as I read this application, that we exceeded our authority. That's not true. The ZBA is allowed to affirm, reverse in Toto or in part any other Board's decision. When we added the condition of Sauvola Road, what we did was to modify a previous decision, in my opinion. Did we make an error? I don't think so. We went through this exhaustively and multiple times. I can see arguments on both sides, as to whether it is a business or not a business and I can see the implication (if we were to say this is a business) on multiple people in town. The Board of Selectmen has decided that it wasn't a business and on two occasions we have affirmed that. It was not a unanimous vote, it was a split vote. There is nothing wrong with that. Everyone is entitled to their own opinions. I will go on record saying that I do not feel we should grant a rehearing.

Janet Goodrich (Chair) asked for any further discussion. As there was none, a Motion was made to go to Decision Tree.

MOTION: Joe Hill moved to go to Deliberative session and Decision Tree. David Drouin seconded.
Vote: 5-0-0 Unanimous

DECISION TREE FOR REHEARING

1. Is the application for rehearing complete?

VOTE: (YES) Unanimous

2. Has the applicant supplied any new information that was not previously available to the Board?

VOTE: (NO) Unanimous

3. Did the Board of Adjustment make any procedural or structural (legal) error in rendering the previous decision

VOTE: (YES) (1) David Drouin
(NO) (4) Joe Hill, Marcia Breckenridge, Janet Goodrich, Bill Thomas

MOTION: Marcia Breckenridge moved that the Board of Adjustment deny this application because it did not meet the criteria: question one and two of the decision tree by unanimous vote and number three by majority vote; that we did not make a procedural or structural error. Joe Hill seconded the motion.

The Board of Adjustment **DENIES** an application for rehearing with a vote of 4-1-0

VOTE: TO DENY (4) Joe Hill, Marcia Breckenridge, Janet Goodrich, Bill Thomas
TO GRANT (1) David Drouin



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461
Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

MOTION: Joe Hill moved to close the public meeting and open the public hearing. Marcia Breckenridge seconded. Vote: 5-0-0

Case # 1048: Michael J. Heil, 37 Maple Drive – MTC 341, Rindge, NH 03461, Map 2 / Lot 59: Application for a Variance from Rindge Zoning Ordinance Article V, Section B-2, to permit the building of an addition within the 50 foot setback (a 12X14 foot den / office).

Rick Sirvint read the motion before the Board.

Sitting on this case were: Dave Drouin (Vice Chair), Marcia Breckenridge, Bill Thomas, Janet Goodrich (Chair) and Joe Hill.

Janet Goodrich (Chair) invited the applicant to address the Board.

Mike Heil: I just want to put an addition on. All the homes in the park are really close to the street. Mine's actually a bit further. All of a sudden, it's a problem.

David Drouin: Do we have any pictures or map of the property or of this park?

Mike Heil: No.

Rick Sirvint: I went over there a couple of days ago and looked at it very carefully. It's in an area of mobile homes that are on foundations. There are shrubs and there is a large open lot. I don't know if that is on his property or someone else's, but it is not really crowded. Based on what I saw and what the applicant put in, I think the addition would be a positive improvement in the neighborhood.

Janet Goodrich (Chair) asked the Board for further questions for the applicant.

David Drouin: Is the variance for the side or for the front?

Dave Duvernay: Front.

Mike Heil: I am 50 feet in but as soon as I put the addition on, it will be 36 feet in the front.

Dave Duvernay: It is a corner lot

Janet Goodrich (Chair): Are there other homes with similar additions in your area?



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

Mike Heil: A lot of the houses are closer than mine. When mine was put in, it was placed 50 feet from both sides of the street. I can't put it on the back of the house because the back of the house is right next to the sewer and you have to be 24 feet from the sewer. We can't go on the driveway side because there is an oil tank and a driveway there and it would enter through my bedroom.

Dave Duvernay: Michael already has a deck and a greenhouse within the 50 feet.

Janet Goodrich: Then it wouldn't be inconsistent

David Duvernay: In the past, the building department hasn't really looked hard at setbacks in the mobile home park. We've had a tendency in the past couple of years to approve it if the park approved it. In the last couple of weeks, we've decided that perhaps that's not a good idea. So this is the first time that I know of that we've had to look at the park for a violation of setbacks. I would be hard-pressed to say no at this point.

Janet Goodrich (Chair) asked for audience members who would like to speak for or against this variance application.

Helen Mae Olson: The Board of Directors of the Park has approved his addition. He is within the guidelines. Helen is in favor of this variance.

Paul Miller (Board of Directors): Helen Mae Olson has covered anything I had to say. I am in favor of this variance.

David Drouin: It sounds like the ordinance, although appropriate for the rest of the town, may not be for the mobile home park.

David Duvernay: Because of this case, I have asked Matt Henry to bring this to the Planning Board for a restructuring of the mobile home park setbacks, if the park wants it. I've asked Helen Mae for all the rules and regulations so we know what is being done there. We'll let the Planning Board change the ordinance and put it before the voters.

David Drouin: The variance stays with the property. Will there be a legal issue because the variance stays with the land and the applicant does not own the land?

Janet Goodrich (Chair): The land owner is here and has given testimony that he has no objection.

Duvernay: We realized as a result of this variance, that we have not asked for a road waiver. We may not be able to access if roads if they are not plowed properly. We thought of going to 75 people asking for road waivers, but they do not own the land. The park did recently sign a road waiver.

Janet Goodrich (Chair): If there are no further questions or comments, I'll accept a motion.

MOTION: Joe Hill moved to go to deliberative session. Marcia Breckenridge seconded, and all were in favor. Vote 5-0-0



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461
Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

DECISION TREE FOR A VARIANCE

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

IT IS CONSISTENT WITH THE CHARACTER OF THE NEIGHBORHOOD AND DOES NOT THREATEN PUBLIC HEALTH, SAFETY AND WELFARE.

Vote: (Y) Unanimous N:

2. Granting the variance would do substantial justice because:

IT MAINTAINS THE CHARACTER OF THE NEIGHBORHOOD AND THERE IS NO PUBLIC GAIN BY DENYING IT THAT OUTWEIGHS THE LOSS TO THE INDIVIDUAL.

Vote: (Y) Unanimous N:

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

IT PRESERVES THE VALUES AND CHARACTER OF THE NEIGHBORHOOD.

Vote: (Y) Unanimous N:

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

IT IS TOTALLY CONSISTENT WITH SURROUNDING PROPERTIES

Vote: (Y) Unanimous N:

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

THE UNIQUENESS OF THE MOBILE HOME COMMUNITY AS A WHOLE WARRANTS FLEXIBILITY. THE SPECIAL FEATURES ARE THAT THE SIZE OF THE MOBILE HOME COMMUNITY LOTS IS MUCH SMALLER THAN THE SIZE REQUIREMENTS OUTSIDE OF THE COMMUNITY.

Vote: (Y) Unanimous N:

5a. 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:

NOT APPLICABLE

Vote: (Y) Unanimous N:



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD
RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964
www.town.rindge.nh.us

5b. the proposed use would be a reasonable one because:

IT WOULD BE A REASONABLE USE BECAUSE IT IS CONSISTENT TO THE NEIGHBORHOOD AND THERE IS NO REASONABLE ALTERNATIVE

Vote: (Y) Unanimous N:

MOTION: Bill Thomas moved to grant a variance, Joe Hill seconded the motion. The vote is unanimous. **Vote: 5-0-0**

APPROVAL OF MINUTES:

The minutes of August 28, 2012 were approved with the following corrections (per Joe Hill):

Please add page numbers to all pages.
On the first page, change draft to approved
On page five, under the third motion, list the vote by member.
Page eight, under motion: use full names
Page nine: The variance was GRANTED

MOTION: Marcia Breckenridge moved to accept the minutes of August 28, 2012 with the aforementioned corrections. Joe Hill seconded the motion. **Vote: 5-0-0**

“Proposed Rules of Procedure Change”:

Janet Goodrich (Chair) read the following proposed change.

“All motions for Rehearing must be acted upon and a decision rendered at a Public Meeting within 30 days of receipt.”

Following a discussion the Board agreed to change the word “must” to “shall”.

MOTION: David Drouin moved that this was the SECOND READING of the section Applications/Decisions, and the new section 1 E would read:

“All motions for rehearing shall be acted upon and a decision rendered at a Public Meeting within 30 days of receipt.”

Joe Hill seconded the motion. Vote was unanimous 5-0-0

David Drouin called the Board’s attention to typographical errors in the Rules of Procedure, revised 4/24/12. On attachment, application receipt, it says ‘draft’ when it was approved. He made reference to attachment C page 11. He also made reference to page 12, application receipt that also says draft.



RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD

RINDGE, NH 03461

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

www.town.rindge.nh.us

Janet Goodrich (Chair) requested that Susan Hoyland send all Board members a new copy of the Rules of Procedure, revised 4/24/12.

2013 Budget

Janet Goodrich (Chair): In the past, we have gone through all sorts of extrapolations on the budget. I suggest that we level fund it this year. A discussion followed and the Board agreed to level fund the Budget for 2013.

The Board requested that Susan Hoyland speak with the bookkeeper and find out what the status is on hours paid to Board members for 2012. This must be finalized by December. It was requested that she get an I9 and W4 for Rick Sirvint and report hours to the bookkeeper.

Reviewers for November 27, 2012 Hearing.

The cutoff date is 4PM on Tuesday November 6, 2012. Reviewers for November are Rick Sirvint and David Drouin.

December meeting date

Joe Hill: The fourth Tuesday in December is December 25. The Board needs to make a decision about what day it will meet.

The Board decided that, if an application is filed, Susan Hoyland will speak with the applicant and if they are willing to wait for the January meeting, it will be placed on that agenda. The Board will adapt to the needs of the applicant and arrange a meeting in December if necessary.

Joe Hill advised the Board that 15 cases have been heard thus far this year with one potential case pending.

MOTION: Joe Hill moved to adjourn at 8:07PM, Marcia Breckenridge seconded and all were in favor.

Minutes respectfully submitted by:

Susan Hoyland, Clerk