



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: November 27, 2012 Approved 2/27/13

Regular members: Janet Goodrich (Chair), Dave Drouin (Vice Chair), Marcia Breckenridge, Bill Thomas, Phil Stenersen
Alternates: Joe Hill, Rick Sirvint, Forbes Farmer
Absent: Janet Goodrich (Chair)
Recusals: None
ZBA Clerk..... Susan Hoyland
Others present.....Holly B. Koski, Jaqui Powell, Benson Walen, Lois Walen, Mike Ellis, and R. Somero

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

David Drouin (Chair) welcomed all in attendance to the meeting. The members and alternates introduced themselves. Janet Goodrich was absent this evening.

Susan Hoyland, (Clerk) announced that notice of Public Hearing for Case #1049 were posted at the town office, police station, fire station, library, transfer station and Monadnock Ledger Transcript.

There were no recusals.

David Drouin: For those who have not attended or appeared before the ZBA: We will open each case. At that time, the applicant can explain the case. We have a discussion among ourselves as well as with the general public. All members can participate and ask questions. When the discussion has ended, we close the discussion and move to deliberation where only five members participate. Regular members have red signs, alternates have blue signs. We will have an alternate sitting tonight.

Sitting on this case were: David Drouin, Marcia Breckenridge, Bill Thomas, Phil Stenersen and Rick Sirvint.

David Drouin: The case before the board is Case #1049.

Forbes Farmer read the case and outlined Article V, Section B of the Rindge Zoning Ordinance.

Case # 1049: Aaron and Diane Seppala, 8 West Main Street, Rindge, NH 03461, Map 6, Lot 35-3, for a Variance from Article V, Section B of the Rindge Zoning Ordinance to allow two separate dwelling units on a single lot.

Aaron Seppala: We're trying to make an apartment for affordable living. Our daughter just got married; it's pretty tough to find something in town so we're looking to create a small apartment. We have 27 acres; you can't see our house from the road. We have a 1200 foot driveway and we are zoned multifamily, so we could put up to 13 units on the property but it would have to be in one dwelling.



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

Diane Seppala: It's an existing garage and it's already built. The building is already built; we want to make a one bedroom unit above the garage.

Marcia Breckenridge: So you would want to add a kitchen and bathroom to make it a single living unit?

Diane Seppala: Yes. One bedroom.

Bill Thomas: Would this connect to existing septic system?

Aaron Seppala: Yes.

Joe Hill: The whole area is zoned for one family unit. This had appeared before the voters (according to Dave Duvernay's memo) in 2008 and the voters turned it down. I think Article V Section A also pertains to this where it says:

“Uses permitted: It shall be a district of farms and single and two family dwellings only.”

Certainly this does not qualify as an ADU, it is not a contiguous building, so you are asking for a variance to go against what the town's zoning says and what the town's people have voted for.

David Drouin: *speaking to Dave Duvernay:* In your memo, you alluded to the ADU ordinance. Either way, this would need a variance. It is an ADU that's not attached and apart, but this would be considered a completely separate dwelling as it does not meet our definition of ADU. I have not seen one of these since I've been on the board.

Dave Duvernay: I was informed by Matt Henry, who assisted the Seppalas that this was to be a detached ADU, and it was from that that I wrote my memo. But if you look at the definitions on page 29, (of the Zoning Ordinance):

“Dwelling, Single Family: A single building, situated on a single lot, having one dwelling unit.”

“Dwelling, Two Family: (including duplex) A single building situated on a single lot having two dwelling units which are either attached side-by-side, through the use of a common party wall, or stacked with one dwelling unit over the other. “

We have for years prohibited a second dwelling unit as we've also prohibited a detached ADU which I believe this smacks of.

Marcia Breckenridge: I cannot tell from the picture that is included in the application if there are two separate buildings.

Aaron Seppala directed the Board to the sketch in his application packet which shows the free standing garage 150 feet from the main house.

Marcia Breckenridge: And the space between the buildings, is that grass?



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

Aaron Seppala: Yes.

David Drouin: Is this building two floors?

Aaron Seppala: It is two floors right now. It has electricity. The upstairs we use for storage and the downstairs is a gym. The bottom floor would remain the same and the upstairs would be a small one bedroom apartment.

Breckenridge: Is there a toilet facility in the bottom floor now?

Aaron Seppala: No, there's nothing

Joe Hill: If the variance goes with the property, if the Board were to grant this and you sold your property, someone else could come in with this variance granted and have two separate family units on one property. The voters have said this is not what they intended.

Dave Drouin: How is that different from what they're asking for now?

Joe Hill: Right now, they are doing this for family.

David Drouin: They are not locked in for this to be for family only.

Joe Hill: The voters had said this is not what we intended. If the Board grants this, then in perpetuity, you could have two separate dwelling units on a single piece of property.

Dave Duvernay: Just for clarification, the voters did not vote on having two separate dwelling units on one piece of property. That was not put before the voters. The voters voted against a detached ADU which in essence is the same thing, a separate dwelling unit on a single piece of property.

David Drouin: But an ADU is limited in size.

Dave Duvernay: True

Dave Duvernay: Someone could come in later and want a bigger place and we couldn't stop them.

Phil Stenersen: We could set conditions.

David Drouin: The difference between a special exception and a variance has always been that the variance requires a harder level or burden of proof but it's always been a hardship and I don't see any application of a hardship. I'd like to see the hardship addressed. When you ask for a variance, you are asking for that part of the ordinance to be set aside entirely.

Dave Duvernay: When you look at the new legislation for a variance, you are being called upon to see if it is a reasonable use. Some of the hardship then goes away.



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: You're asking for that part of the ordinance to be set aside.

Marcia Breckenridge: Does the special exception go with the property?

David Drouin: They both do: the variance and the special exception. Something that receives a special exception is a use that is allowed by special exception. A variance is when something is not permitted, not allowed, not allowed by special exception and there is no alternative but to ask for a variance.

Dave Duvernay: I had an occasion last week to go through an appeal and its direction to ZBA's and one of the things that caught my eye was that the ZBA has no right to re-write the law of the town. You can interpret what's there but you can't just say okay and give them a variance.

Phil Stenersen: But isn't that exactly what a variance does?

Dave Duvernay: A variance allows the owner of the property to violate the ordinance. But you cannot re-write the law.

David Drouin: So if the Board thinks that there is a bad part of a law, they cannot just issue variances to make it happen. Each case must stand on its own merits.

Forbes Farmer: I understand in the application, number 4, that you are to provide for your daughter. It says here "to provide affordable housing for low income residents ..." If this were granted, does that mean that the entire property, not only this dwelling, but the whole property becomes eligible for low income housing? Someone could buy it and rent the whole place?

Aaron Seppala: That was not our intention. Rather than saying we're getting on in age and want help with our taxes later on, or other excuses we could use, we thought this approach made sense. It's hard to find lower priced apartments around here for people who just got married. That's why we used the term low income

Diane Seppala: It's affordable housing.

Rick. Sirvint: If you were denied a variance, you would be able to use your property without any hardship to you personally, is that correct?

Aaron Seppala: Yes, it's still a barn, as we call it, and we could still use it as we have in the past.

Phil Stenersen: That's the case with any property. They could still use it.

Bill Thomas: I'm wrestling with the hardship clause. The laws have changed. Under the old rules, we have denied at least one and maybe a couple of these. I don't know where this leaves us with the new law. Under the old law, we could not grant it.

Phil Stenersen: I agree with that.

Bill Thomas: I'm not sure where this change in the law leaves us.



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 think the whole idea is, and I think the Board has been very consistent with it, that it's always seemed very reasonable to accommodate a family. . We've identified and acknowledged that there is a Special Exception for an ADU and it's a clear process. We've had an ADU, two variance applications. But this is a dwelling. An ADU is limited in size and scope. This is 700 square feet. You have to look past the current desires of the owners. I believe this would be just family but 15 years down the road, this could become a 3500 square foot dwelling and you would have two dwellings on a single lot. You're asking for a basic tenet of the ordinance be set aside. However, this is on 27 acres but only 150 feet apart. It's very hard; we cannot consider a financial hardship.

Phil Stenersen: If we look at the spirit of the zoning ordinance, we could have condos here. You'd have more than one dwelling on a lot.

Phil Stenersen: You have two families, two houses on one lot. One family wants to move. How do you do it? I think that was one of the reasons why in 1963 or 1959 or whenever it was, you had one dwelling unit on a lot. You also have the situations with the size of lots; if you have a 2 acre lot and a 1.5 acre lot and with two dwelling units on it, it gets pretty tight. But this is a 27 acre lot.

Forbes Farmer: Are you saying that while it may seem reasonable to help them out, you would be setting a precedent?

Phil Stenersen: I think this case can sit on its own. Each case is decided on its own merits.

Bill Thomas: It seems reasonable to help the family now, but years down the road, this property is sold and now you have two dwellings on one lot. The variance is still in effect. The area is one thing but you still have two units on one lot and who knows what might happen.

Dave Duvernay: Aaron is correct. He is zoned to make a two family or three family house out of his home with that kind of acreage if they chose to. The other thing I wanted to add is, if you recall back with the Heikkinen situation, you allowed a subdivision of a rather large parcel to accommodate a second house. Conceivably, if he applied for that, you would probably grant it.

Rick Sirvint: That was a variance for frontage and it was to go to the Planning Board to determine if it would be allowed.

David Drouin: That one had more than enough for one but not for two. This case is under frontage for one.

David Drouin asked for final comments before moving to deliberative session.

Aaron Seppala: We just came here with good intentions and are hoping for the best.

Roger Somero: I had a question. I missed a word when they were talking about the building.

David Drouin: Was that the ordinance? I believe those definitions are on page 28 and 29.

David repeated the definitions of dwelling units for Mr. Somero.



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 go to deliberation. Phil Stenersen seconded the motion.
Vote 5-0-0 all in favor**

Sitting will be Marcia Breckenridge, Bill Thomas, Phil Stenersen, Rick Sirvint and David Drouin.

David Drouin provided the Seppalas with a copy of the Decision Tree that would be used as the Board made their decision on the case.

David Drouin read No. 1 of the Decision Tree.

Phil Stenersen: The spirit of the ordinance is that it does not alter the character of the neighborhood nor threaten public health, safety or welfare. The Res-Ag District allows for two family dwellings on a lot, but it has to be in one unit. So as far as the spirit of having two family dwellings on one lot, it meets that. There is no issue. If you look at the preamble of the Zoning Ordinance it talks about promoting the health, safety and welfare of the inhabitants and preserving the values and charm now attached to the Town of Rindge. That is the purpose and the spirit of the ordinance. This request does not violate that spirit at all. It's 1200 feet off the road, is not visible at all, provides a place for someone to live and meets the spirit of the ordinance.

David Drouin: It says it's a district of single family and two family dwellings.

Phil Stenersen: Every bit of writing after the preamble is to make that happen. It's all about promoting the health, safety and welfare of the inhabitants and preserving the value and charm.

David Drouin: And that's the mechanics of how that's done.

Phil Stenersen: And part of the charm is one lot, one home.

Phil Stenersen: All I'm saying is that 2 homes set 1200 feet off the road is not going to affect the spirit of the ordinance at all.

Bill Thomas I'm getting stuck on the basic zoning objectives because our basic zoning objective is one house, one lot. Yes, it is well off the road, it's not visible, it's not going to change the character of the neighborhood. It's going to go with the property. I'm up in the air.

Phil Stenersen: How is this different than giving them a variance for frontage or anything else?

David Drouin: We look at those frontage requests as a percentage, how is the access? Is it unsafe? All of those weigh in at the time.

David Drouin: If we're stuck, and not ready to work on number 1, we can move on.

Phil Stenersen: (reading from the Decision Tree)" *The New Hampshire Supreme Court has recognized two methods for ascertaining whether granting a variance would violate an ordinance's basic zoning*



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

objectives. Examine whether granting the variance would alter the essential character of the neighborhood and 2) Examine whether granting the variance would threaten the public health, safety or welfare.”

Bill Thomas: Reading that paragraph, I would have to say no to either of those questions.

David Drouin: If the essential character of the neighborhood is one of single dwellings, of one dwelling on one lot, then it would. As to number 2, no it doesn't. And even if it does affect the essential character of single family dwellings, you cannot see it.

Phil Stenersen: I think the single house on a single lot is not the character but a detail of the ordinance. I think for something to affect the character, it would have to be something that one would see driving by, something that stood out.

Marcia Breckenridge: I'm not sure what the definition of the neighborhood is. They're on 27 acres.

Bill Thomas: When you talk about a neighborhood, I think you are talking about what you can see from the road. When you drive down West Main Street, you're not going to see this.

Marcia Breckenridge: It's important to mention you are talking about two dwellings on 27 acres. If the spirit of the zoning is to cut down on density, this is not going against the spirit of the density.

Marcia Breckenridge: My process of thinking would be very different if this were a small piece of land. But it is 27 acres. That solves the density concern for me.

Rick Sirvint: The relationship of the two dwellings together is more important than the 27 acres. If they are right next to each other, only 50 feet or 100 feet apart, that's density.

DECISION TREE FOR A VARIANCE

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

The character of the neighborhood would be maintained because the second dwelling is not visible from the street and the public's health, safety and welfare are not threatened.

Vote: (Y) (All) N:

2. Granting the variance would do substantial justice because:

There is no gain to the public by denying the variance.

Vote: (Y) (All) N:

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

The values and character of the town are not changed by this proposal.

Vote: (Y) (All) 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

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

There are no external changes and both the buildings are not visible from the street and they are on 27 acres.

Vote: (Y) (All) 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.

Special conditions include the amount of acreage, the shape of the lot and location of the buildings.

Vote: (Y) (All) 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:

As 5 was passed, 5a was not needed

Vote: (Y) (All) N

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

of the shape, size and location of the property.

Vote: (Y) (All) N

A discussion followed as it pertained to conditions being set so that the secondary dwelling is no more than 50 % of the square footage of the primary dwelling.

MOTION: David Drouin moved to grant the variance (as it met all criteria of questions one through five of the Decision Tree) with the following condition:

The secondary dwelling shall be no more than 50 % of the square footage of the main house at any time.

Bill Thomas seconded the motion. **Vote: 5-0-0**

The Board of Adjustment APPROVED the application for Variance for Case #1049 with a vote of 5-0-0.

The Board thanked the Seppalas for coming and advised them of the 30 day appeal timeframe.

Susan Hoyland (clerk) announced that the Notice of Public Hearing for Case #1050 was posted at the town office, police station, fire station, library, transfer station, Keene Sentinel.

Forbes Farmer read the case before the Board. Forbes Farmer reviewed the ordinance.



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

Case # 1050: Ben and Lois Walen, 174 Red Gate Lane, Rindge, NH 03461, Map 34, Lot 6, for a Variance from Article IV, Section B-2 of the Rindge Zoning Ordinance to construct a handicap ramp within the 50 foot setback from the edge of the right of way.

David Drouin read three abutter letters offering support for Ben and Lois Walen's request for a Variance from the 50 foot setback.

Nov. 23, 2012: From Holly B Koski, 123 Red Gate Road.

Nov. 26, 2012: From Elizabeth Cummerford, 191 Red Gate Road

Nov. 16, 2012: From Jacqueline Powell, 105 Red Gate Lane

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

David Drouin (Vice Chair) invited the applicant to address the Board.

Lois Walen: My husband is having trouble getting up the stairs, he is getting worse daily and may need a wheelchair in the near future and a ramp would certainly help him.

Rick Sirvint read from RSA 674.33 : "the variance may be granted without hardship finding if reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises provided that: a) any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance and b) in granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in finding included In the variance, that he variance shall survive only so long as the particular person has a continuing need to use the premises"..

Rick Sirvint: I would strongly support approval of this Variance.

Phil Stenersen: Is the roof covering the entire ramp?

Lois Walen: No, just over the first part so that the snow won't fall on the ramp and so it doesn't get slippery

Phil Stenersen: How far off of the side setback are you?

Lois Walen: The house extends beyond the ramp but the ramp cannot be built to the side because of the septic.

Phil Stenersen: How far out will the ramp go?

Lois Walen: 24 feet



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: Bill Thomas moved to go to deliberative session. Marcia Breckenridge seconded the motion, and all were in favor. **Vote 5-0-0**

David Drouin gave the applicant a copy of the Decision Tree.

DECISION TREE FOR A VARIANCE

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

it maintains the character of the neighborhood and promotes public health, safety and welfare.

Vote: (Y) (All) N

2. Granting the variance would do substantial justice because:

there is nothing to be gained by the public by denying safe access to one's own home.

Vote: (Y) (All) N

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

the spirit and intent of the Rindge Zoning ordinance is to protect health, safety and welfare and preserves the value of the town.

Vote: (Y) (All) N

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

property value does not drop because of handicap access.

Vote: (Y) (All) 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.

The special conditions of this particular lot distinguish it from the lots across the road and literal enforcement would exclude the possibility of a handicap ramp.

Vote: (Y) (All) 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:

There is no connection between the setback and handicap access

Vote: (Y) (All) N

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

It is reasonable because it promotes safety and welfare. It would be a hardship to deny access to their home

Vote: (Y) (All) N

MOTION: Joe Hill moved to grant a variance as all five criteria have been met, Phil Stenersen seconded the motion. The vote is unanimous. **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

The Board thanked the Walens for coming and advised them of the 30 day appeal timeframe.

APPROVAL OF MINUTES:

The minutes of October 23, 2012 were approved with the following corrections (per Joe Hill):
Page three, second paragraph, second sentence: "secondly I don't think their claim is VALID"
Page six, under number 5, just for consistency, change to Unanimous, and add the word "because",

MOTION: Marcia Breckenridge moved to accept the minutes of October 23, 2012 with the
aforementioned corrections. Bill Thomas seconded the motion. **Vote: 4-0-1**
Phil Stenersen abstained.

Reviewers for January 2013.

The cutoff date is 4PM on Weds, January 2, 2013. Reviewers for January are Joe Hill and Forbes Farmer.

David Drouin: If there is a December case, Rick Sirvint and David Drouin will be the reviewers.

MOTION: Bill Thomas moved to adjourn at 8:40PM Phil Stenersen seconded and all were in favor.
Adjourned at 8:40 PM

Minutes respectfully submitted by:

Susan Hoyland, Clerk

