



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

APPROVED

PUBLIC HEARING MINUTES

March 27, 2007

Members present were: Joseph C. Hill, MD – Chair, George Carmichael – Vice-Chair, David Drouin, and Marcia Breckenridge.

Alternate Members present were: Janet Goodrich, Richard Feldman and Bill Thomas.

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

Hill stated, “This public hearing will end at 10:30PM, and if additional time is needed the ZBA will decide at that time when additional time will be scheduled to be fair to both the applicant and the ZBA. “

The members and alternates of the board introduced themselves stating their names and status on the board.

Secretary McDermott read aloud the posting locations for the Notice of Public Hearing for this evenings’ public hearing.

Member William Harper was recused from this evenings’ deliberations as he had not participated in the first case by this applicant. Hill appointed Richard Feldman to be a voting member for this Public Hearing.

Hill asked if there were any other members who were recusing from this case. There were not. Hill stated that those sitting at this Public Hearing are Mrs. Breckenridge, Mr. Drouin, Mr. Feldman, Mr. Carmichael, and Dr. Hill.

Approval of Minutes of January 23, 2007

Motion was made by Breckenridge, seconded by Carmichael to accept the minutes of January 23, 2007 as written. The motion passed unanimously.

Approval of Minutes of February 27, 2007

There were several typographical and grammatical corrections. In addition, a statement was inserted that the word “structural” equates to the word “legal” where it was used.



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Motion was made by Feldman, seconded by Breckenridge to accept the minutes with of February 27, 2007 with corrections as noted. The motion passed unanimously.

Thomas read aloud the case before the Board this evening.

Case # 968: Cedarwood Development Corporation, Timothy Foley, President. Application for an Area Variance to Rindge Zoning Ordinance Article IV: Section B; and the Wetlands Ordinance Section 2: A, B, and C; and Section 8 to allow the removal of a non-conforming shed and relocation of a new non-conforming shed within 3' of the property boundary line and within 50' of the Wetlands boundary. Location: 56 Red Gate Lane; Map 34/Lot 29.

Goodrich summarized the pertinent Rindge Ordinances and NH RSA.

Rindge Zoning Ordinance

Article IV: Section B - The residential district frontage, yard, and area requirements.

1. Frontage: Every lot shall have a minimum lot frontage of two hundred fifty (250) feet as defined in Article XVI, Section M.
2. Yard: No building shall be located nearer that (15') fifteen feet to an abutter's property line or fifty (50) feet from the edge of a right of way.
3. Area: Each lot shall have an area of no less than two (2) acres.

Wetlands Ordinance: Section 2. Purpose – A, B, C and Section 8.

Section 2. Purpose

In the interest of the public health, and convenience, safety and welfare, the Regulations of the Wetlands Conservation District are intended to protect the quality of water in the Town of Rindge.

- A. To regulate the development of buildings and land use within the regulations of the Wetlands Conservation District that would contribute to the pollution of surface and ground water by sewage or other contaminates.
- B. To prevent the destruction of wetlands, which provide flood protection and natural habitats for wildlife.



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- C. To prevent unnecessary or excessive expenses to the Town of Rindge to provide and maintain essential services and utilities which arise because of improper use of wetlands.

Section 8. Special Exceptions

Special Exceptions for the undertaking of a use, not otherwise permitted in this ordinance, may be granted by the Board of Adjustment if it can be shown that such proposed use will not conflict with the with the purpose and intention of Section 2, and the applicant has obtained all other applicable permits. The Rindge Conservation Commission shall receive notice from the Board of Adjustment of any application for Special Exception and shall render an advisory opinion to the Board of Adjustment on such applications.

NH Statute RSA - 674:16

RSA 674:16 – Speaks to the authority of the BOA to regulate lands use as to the height, number of stories and size of buildings and other structures; and lot sizes, the percentage of the lot that may be developed and other open spaces; the density of population in the town; and the location and use of buildings and structures and land used for business, industrial, residential, or other purposes.

Hill asked if everyone was in possession of the opinion letter from the Conservation Commission and the amended application with regard to this case. All members and alternates stated in the affirmative.

Mr. Timothy Foley was in attendance to present this proposal stating that his intention of the amended proposal, after the review and recommendation of the Conservation Commission, was to relocate the proposed shed out of the wetlands district by attaching it to the side of the house.

Hill stated that the amended application had satisfied the wetlands issues, by moving the shed out of the wetlands.

Hill asked if there were a communication between the house into the proposed shed or is the shed just on the side of the house.

Foley answered that here would probably be a fire door from the shed to the house because the shed would be attached. Foley indicated that on the original proposal, he preferred the shed not



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to be attached allowing a window on that side of the shed to allow daylight through. This newer proposal is to accommodate the Conservation Commission's request to locate the shed out of the

wetlands boundaries. He said that the most practical thing to do to accommodate the Conservation Commission's recommendation was to attach the shed to the house to still allow 5 – 6 ft between the combined house and shed and the property boundary to be able get in the back yard with wheel barrows, canoes and the like. The shed would be attached to the house by 14' or more, and a communicating doorway would be needed.

Hill asked Mr. DuVernay, "If the shed is attached to the house and there is an entranceway between house and shed does this change the footprint of the house to which we have already granted a special exception?"

DuVernay said he was sure that it did. The shed is no longer a separate accessory building; it has now become a part of the house.

Carmichael said that the Board could ask Mr. Foley to put a one foot corridor in there between the shed and house or we could ask for a smaller building.

DuVernay said that the definition of an accessory building does not mean it has to be separate from the house.

Carmichael said that if a shed is attached, the shed then becomes a part of the house and he is troubled by the attachment of the shed to the house. Foley replied that the amended proposal is in response to the Conservation Commission's suggestion. Carmichael said "There's no place on the lot where the shed would conform. If the shed is kept where it is, that is less than a perfect situation. Moving the shed away from abutter's line and from the water's edge is great." However, Carmichael stated that he was concerned that the shed might be changed into living space if allowed to be attached to the house. It might not happen for five years or ten years, but it is bound to happen, as often does with lakefront property.

DuVernay asked why there was a problem with that scenario and Carmichael stated that an addition on a home is not a shed. The footprint would become bigger, than what previously existed. DuVernay said there was nothing in the regulations that would preclude a shed from being attached to the house. He also said that the board could ask the applicant to locate the shed 1' from the house, but what sense would that make?

Thomas asked, "If the future owner wanted to improve the shed and make it living space, wouldn't he / she have to come back before the Board to get approval / permission?"



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Carmichael asked if a building permit was required for interior renovations and Duvernay replied that it was.

Feldman asked if the applicant would be content without a door. The Board felt that at that juncture the door, like living space, would be installed at some later point in time. DuVernay said that there would be difficult to enforce whether or not there is a door because it cannot be seen from outside.

Abutter Kalinen asked if this was the property next to her and was told that it is.

Foley indicated that he thought his original application was a great remedy for the property moving the shed away from the wetlands from 3' to 31.5'.

There was discussion as to which submittal / plan the Conservation Commission had reviewed. Drouin stated that it was the original plan with the shed setback from the water was 31.5'. The applicant's request to amend his application came after the Conservation Commission's review of the lot with their recommendation to locate the shed out of the wetlands boundaries.

Drouin, who is also a member of the Conservation Commission, said that the Conservation Commission had liked the original drawings and shed placement, but after the site visit wanted the shed location set back as far from the water as possible. Drouin said that 31.5' was not 50', the figure associated with the State statute and the Town's Wetland's setback, but it was better than the 3' which currently existed. The Conservation Commission was concerned about the runoff of the shed being guttered away from the water and that when the old shed is removed, that the banking be restored in the presently existing shed location.

Carmichael stated, "While the applicant could rebuild the shed in the same location as it is now, which is 3' from the water's edge, the proposed 31.5' distance between the shed and water is a much better situation. Additionally the original plan would allow the driveway, and a 6' distance between buildings front to back yard."

Applicant Foley said that the Conservation Commission had understood the entire proposal indicating that 31.5 feet was better than 3', but it was not 50' as is required per the Wetlands Ordinance. Their idea was that if it was possible to remove the shed from within the wetlands district boundaries, that proposal would be their recommendation.

Carmichael stated that in his opinion the relocation of the shed, with placement attached to the house, makes it more difficult to approve because it may become an addition.



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Foley asked if the Board could provide the latitude that would decide which proposal they preferred, so that he can have a place to store canoes, life preservers, lawn chairs, and the like.

Feldman asked, "What was the 6' extension to the water facing side of the shed?" Foley answered that he was trying to capture the same amount of square footage as that which existed currently in the shed.

Feldman asked if the 6' jut out could be placed on the water side of the shed, or if it didn't matter, be placed on the rear of the shed. Foley said it has to face the water because the driveway was very short - only two cars lengthwise. If the shed were attached to the house, with the jut facing the front of the house, then he would lose a lot more room.

Carmichael asked, "Why not build the proposed shed in a rectangular shape with the same amount of square footage without the jog?" Foley answered, "That could be done. This would set the proposed shed back further from the pond."

Carmichael said that he did not want to change the design of the applicant's building.

Hill reminded the Board that if the shed were allowed to be attached to the house, conditions could be placed on the approval that would be no renovation of it or space created as living space.

Carmichael stated, "The amended plan takes away from his driveway and is not as good as the original plan of the applicant." Other board members agreed preferring the original proposal in that it set the shed back farther than exists. Carmichael stated, "The applicant prefers it to the amended proposal, it is a win-win type of situation - the shed is farther away from the water, even though it is in the wetlands district, and is substantially better than allowing an attached shed, which looks like and may become, an addition of living space to the house."

Drouin stated that the Conservation Commission thought the worse case scenario was the house be rebuilt and the shed be left in place and years down the road the new homeowner would rebuild the shed in the same location as in sits now - 3' from the water's edge.

DuVernay said, "I wonder why the shed can't be squared off utilizing the same footage if this is critical so that it would then be farther away from the water's edge? A canoe might not fit in a 14' length but it may not need to go as far as the 22' that it proposed." Board members questioned whether providing an extra 2 or 3 feet really is worth it. It was felt that it gives the neighbor and applicant more privacy, and a better site line. Carmichael said that there are people who have 20' canoes.



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Carmichael and Drouin agreed that the applicant has a preferred plan, the original, which is much more agreeable. Carmichael stated, "Moving the shed away from the house is a better idea. The original plan takes away the bowling alley look of this lot, created by the amended proposal."

Abutter Anne Bennett of 54 Red Gate Lane was in attendance and questioned the shed's placement – "Would it be on my side of the subject parcel or the other side?" Foley stated that it would be on her side. She questioned the removal of the trees along the west property line between her lot and the subject parcel and the height of the proposed shed. Foley replied that some of the trees may be removed; these are contained on the subject parcel. Foley said that the walls of the shed may be 12 – 14' high. Bennett questioned if these were the trees outside her son's bedroom. No one knew the relation of her son's bedroom window to the trees outside. She stated that she is concerned what will be seen from the bedroom windows. She has a one story house- her view is already blocked somewhat by the 8' fence dividing the properties. She said the only windows in the bedrooms in her house are on the east side, facing the subject parcel. She doesn't want to look at a wall and won't be able to see the sun. Hill suggested that it would be a better view than looking at the decrepit shed that is there now. Mrs. Bennett replied, "That's not a big deal."

Carmichael stated, "No matter where the shed was placed it , even if it was moved back and attached to the house, or moved 20' towards the road, it would still be close to her home."

Carmichael asked Mrs. Bennett if there were a tree buffer on her property that would provide a screening from the subject parcel.

Mr. Foley said that it is problematic because Mrs. Bennett's house is located 1' from the property line and there is an 8' fence already there. The fence belongs to the subject parcel and Mr. Foley intends to keep a fence but may replace the existing fence.

Mr. Foley said that the intent is to provide privacy for both his and Mrs. Bennett's lot. The shed would provide some of that. The walls of the shed may not be higher than the fence. Mr. Foley said that if we could agree to a design of the shed he was open to suggestions – something like a sugar house? He wants to build something that is pleasant to view from all angles.

Carmichael made a motion to close testimony and go into deliberative session, seconded by Breckenridge and the motion passed unanimously.



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After deliberation the Board found that:

1. The area variance will not be contrary to the public interest because:

It is more esthetically pleasing to the general public and relocating the shed farther away from the water's edge is more in compliance with Wetland's Regulations than what exists now.

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 because:

The Special conditions that exist for this property are the narrowness of the lot and the lack of area and this is the best solution.

b. The benefit sought by the applicant cannot be achieved by some other reasonably feasible method because:

It cannot and is driven because of the lot configuration and the limited options available.

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

It is consistent and preserves the values and charm of our Town.

4. Substantial justice is done by granting the variance. If the variance is denied, the applicant will be burdened because:

If the variance is denied the applicant will be burdened because he would have to rebuild the shed in the current location which will further violate the wetlands.

5. Granting the variance will not diminish the value of surrounding properties because:

It will improve the value of the subject property therefore the value of the surrounding properties.



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The Board added the following special conditions:

- A: The infiltration of all roof runoff rather than surface discharge.
- B: The area be stabilized after the removal of the existing shed by seed, mulch and a dense border planting of adapted native shrubs.
- C: The plan that is dated 3/27/07 and signed by the voting members of the Rindge Board of Adjustment is the official map that has been approved.

A Motion was made by Breckenridge and seconded by Carmichael to **GRANT** the Area Variance with the three attached special conditions. The motion passed unanimously.

The signed map is on the next page.



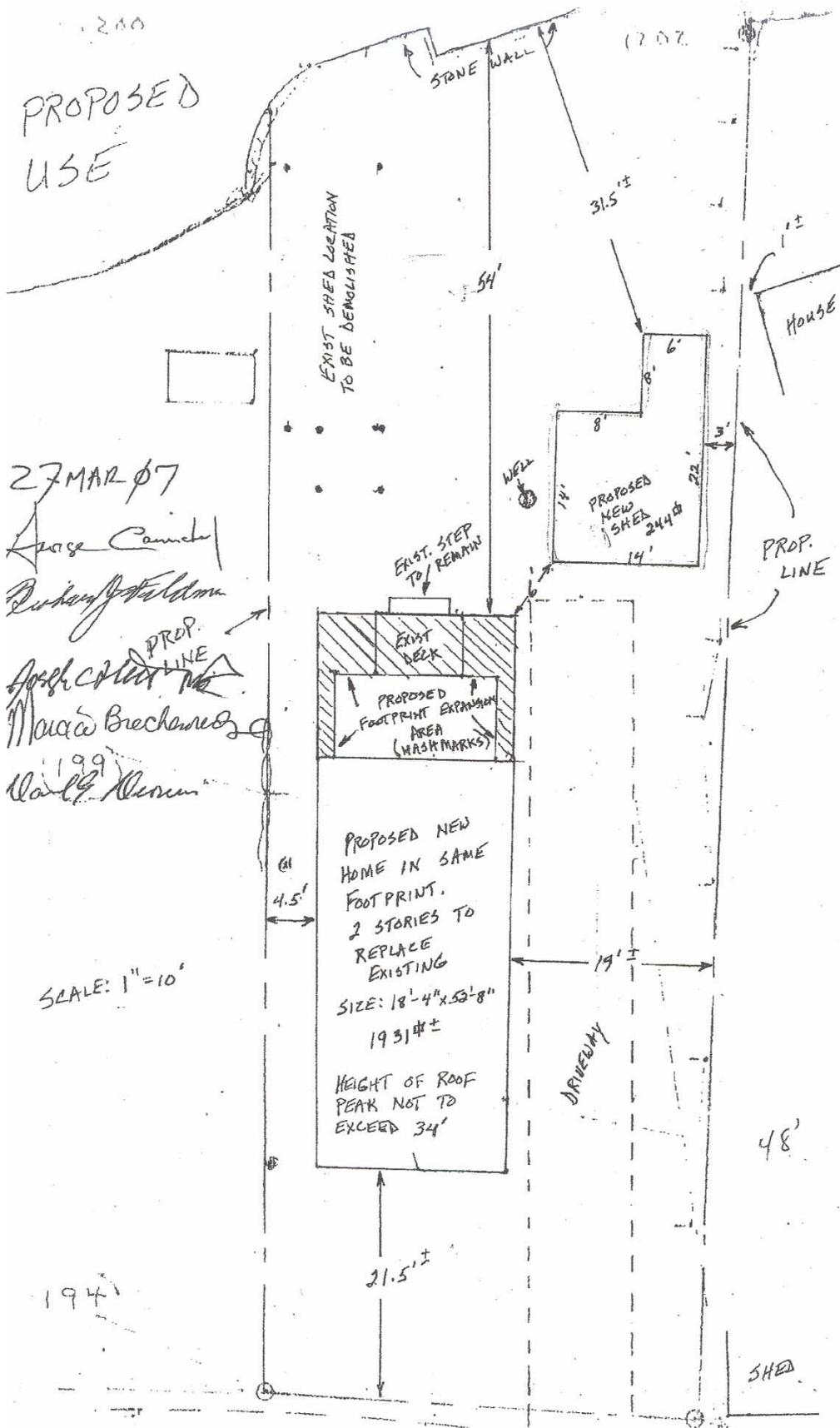
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Hill asked if there was any other business before the Board.

DuVernay said he was under the impression that the Board had been considering the idea of recommending to the Board of Selectmen the enforcing the laws that are already in place, particularly the enforcement of real estate signs.

Harper suggested the Board of Adjustment not determine what the Selectmen enforce, and that it is not the Board of Adjustment's determination to make. It was the unanimous consensus of the Board that this was true. No formal vote was taken on this matter.

Hill reminded everyone that this is the last session of this ZBA and he thanked everyone for their help and hard work during the past year; he has enjoyed being the Board's Chairman.

There will be an organizational meeting on April 2, 2007 and in addition to the election of officers Hill would like to suggest to the Board some issues about which to think.

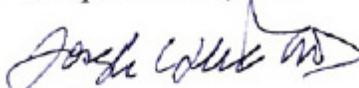
- 1: The Board's opinion on sending out the RSA's and ordinances ahead of time. The new State statute books contain reference materials and a CD which should make preparing for a meeting easier. A Board decision should be made to determine if this practice should continue of sending the pertinent RSA's and Rules/Regulations. There was some discussion about this, and a decision will be made at the Organizational Meeting.
- 2: Making the changes to the Rules of Procedure in relation to the Board members now being an elected board.
- 3: Any ideas to make the Board run better.

Motion was made by Thomas, seconded by Drouin to adjourn the hearing at 8:35 PM. The motion passed unanimously.

Jody McDermott
Secretary / Clerk

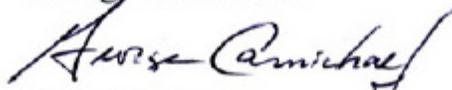
Respectfully submitted

Joseph C. Hill, MD



Chairman

George Carmichael



Vice-Chairman