



## 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

**APPROVED** MEETING MINUTES: September 27, 2011

Hearing Date: September 27, 2011

Decision Date: September 27, 2011

Case Number: 1031 (continued)

1033, and 1034

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

### Present:

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

Alternates: ..... Joe Hill and Rick Sirvint

Absent: ..... Charlie Eicher

No recusals.

### Timothy Connolly / Case #1031:

Case Continuation. Timothy Corwin, Esq. on behalf of Timothy Connolly, 53 Whitney Lane, Rindge, NH 03461, Map 10, Lot 35-1 for a Variance to the Zoning Ordinance Article I, Section 13 Accessory Dwelling Unit Ordinance as follows: [a] to permit a proposed Accessory Dwelling Unit at 53 Whitney Lane to occupy 43% of the gross livable area where only 25% is permitted; [b] to provide no interior access between the primary dwelling unit and accessory dwelling unit where such interior access is required; and [c] because the proposed ADU will be located in the existing finished basement, a variance is requested from the requirement that a building permit for an ADU must be approved and issued prior to construction.

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

Joe Hill read the case before the Board and Rick Sirvint summarized the related ordinances.

Dave Drouin said he still has no basement plan, drawings, or pictures, and Tim Connolly said he didn't know he was to provide them. The spiral staircase goes from the first floor to an upper loft, but does not come up from the basement. Drouin said that two or more members of the ZBA could visit the site, which would be a continuation of this public hearing. Marcia Breckenridge asked whether the spiral staircase could be extended to the basement, and Connolly said there was no way.

Janet Goodrich said, "At the time you were permitted to be there temporarily, it wasn't designed to be an ADU; it was designed to be used temporarily while you were building the upper floors and you weren't going to live there permanently."

Drouin: "There are no minutes of a meeting related to this project because we don't have any permits for this except that we have an electrical application to wire the basement as a temporary floor."

Roberta Oeser (who attended with Tim Connolly): "Does that application say temporary residence or temporary? All electrical is temporary until you wire the house. There was no ADU at the time; it was a finished basement."

Breckenridge: "Having a kitchen in the basement makes it two separate residences."

Oeser: "The kitchen is about 4 feet wide."

Breckenridge: "Its size doesn't matter—a finished kitchen includes a stove, refrigerator. You can have a finished basement in a single-family dwelling, but you can't now be a landlord with a tenant."

Oeser: "There is no landlord/tenant relationship; his daughter lives in the house and collects no rent."

Breckenridge: "He was renting to someone else."



## 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

Goodrich: "At the prior meeting, you said you rented it out to college students upstairs, which makes it two residences."

Connolly: "I'm not renting it now."

Breckenridge: "But you have in the past. Right now, I'm seeing this as two residences in a situation that doesn't meet zoning specifications for two residences."

Connolly: "But that's why I'm here. I'm disabled and this basement has handicapped access and would be perfect for me, and I want to give my kids the upstairs."

Joe Hill: "If you rent the upper floor and you're living downstairs and your kids live upstairs, whether you're a landlord or not, it's a two-family structure where the permit that was granted you was for a single-family dwelling and you've been assessed all these years for that."

Stenersen: "What would change if it were a two-family? DuVernay: Very little—the title would change, but the taxes primarily are based on square footage."

DuVernay: "What he has is an illegal two-family dwelling in the commercial district. And the septic was only approved for a two bedroom."

DuVernay: "He needs four variances for this to be classified as an ADU. There's never been an intent to incorporate the basement into the house; there are no stairs."

Stenersen: "Would only one variance be required to make this a two-family dwelling in a commercial district?"

DuVernay: "I have determined that it is not grandfathered as a two-family dwelling. He could appeal to the ZBA, but there would still be conditions, such as upgrading the septic, and safety issues needing to be addressed if he's having someone else living in there."

Connolly: "There are three egresses out of the basement. There was a garage door there initially, and the Town made me change it all around."

Rick Sirvint: "Is it your intention to live in the basement and have your daughter live downstairs?"

Connolly: "Eventually. A friend who needs a place to stay is staying down there now. But when I need a wheelchair, it will be good for me."

Goodrich: "But now two different families are living there. You requested that the dwelling be grandfathered. But the comps you used when you appealed your valuation were single family dwellings."

Connolly: "No, you're wrong about that. My comps were anything I could find—all I had were three concrete walls in the ground. I don't care what the comps were."

Goodrich: "Grandfathering it as a two-family when it was a single family—there's a disconnect."

Stenersen: "Where are you living now?"

Connolly: "Florida, and other places."

Stenersen: "We could consider granting him as a two-family, but the request is for an ADU which it's not."

DuVernay: "But do you want him to come back next month to file an application for a two-family? It's a mess."

Oeser: "We had a similar situation with the Planning Board; people came and asked for something and they approved something else."

Drouin: "The Board has to be careful about what it approves."

Oeser: "The Board has the power to grant relief."

Hill: "The ZBA can grant relief, but it doesn't have the power to change the application, legally."

DuVernay: "I would suggest that if your rules determine to file an application, then have him apply for an application for a two-family dwelling in the commercial district."

Hill: "If the ZBA agrees, we could turn down the ADU and have him file an application for a variance for the two-family, and we will not impose an additional fee."

Goodrich: "But we have issue with a two-family because of the lot size, etc."

Sirvint: "Why are you doing this now?"

Connolly: "Nothing has happened in 20 years with this."



## 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

Drouin: "Looking at this, there's not nothing that happened with this property. There's been a fair amount of activity here."

DuVernay: "Actually, we sued him."

Oeser: "Is there anything in the ADU that says where he has to live?"

DuVernay: "Yes."

Drouin: "We have a lot of applications where the owner lives in the smaller portion."

Sirvint: "So, you're not living in the house?"

Connolly: "I've stayed there off and on for years; I stay there in Florida during winter for arthritis and rent it to a college kid."

DuVernay: "Being a two-family would resolve the ADU issue about him having to live there longer, etc. There are a lot fewer restrictions for a two-family than there are for an ADU."

Drouin: "The easier route would be to apply as a two-family, but we still would need a variance for the undersized septic, undersized lot, and inappropriate district for a two-family. A new application will be required, and Connolly will need to provide us with a drawing or plan."

Stenersen: "We don't really need the interior drawings for a two-family; the issue will be more the lot size, septic, etc."

Goodrich: "The hardship factor has to be addressed."

Drouin: "We have to act on this new application. Your strongest case is to answer all the questions well, including the hardship question which can have nothing to do with his knees; it cannot cite a personal hardship. The hardship must run with the land, like if the property is very steep and can't accommodate the setbacks."

Stenersen: "The biggest hurdle to overcome will be the lot size."

Hill: "So he needs to withdraw his current application."

Goodrich motioned to table all aspects of Case 1031 with permission from the applicant. The variance request was for an ADU with no interior access and in a commercial district. The ZBA took action on Case 1030 previously (which was the special exception). Breckenridge seconded, and all were in favor.

Connolly: "I'll be gone out of the area in two weeks for the winter."

Drouin: "But you have a legal agreement that this will be resolved."

DuVernay: "I'll make sure this is pushed back."

Goodrich: "If you choose, you can submit another variance application by the second Tuesday of the month and we will not charge you any fees. And you can have somebody represent you."

### Dana and Rebecca Ryll / Case #1033:

Dana and Rebecca Ryll, 38 Fieldstone Lane, Rindge, NH 03461, Map 25 Lot 8. For a Variance from Article 5, Section B-2 of the Rindge Zoning Ordinance requiring a setback of 50 feet from the edge of a Right-of-Way.

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

Rick Sirvint read the case before the Board and Joe Hill summarized the related ordinances.

DuVernay: "They live in a village district, not RES/AG. No building shall be located less than 15' from an abutter."



## 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

Roberta Letourneau: "The maps in Robyn's office show the property as RES/AG, but the Vision database shows otherwise. Our conflict is the town road; it extends into their property and didn't end at their property line. The property originally went down to 119 but was subdivided off. The road, which was the original town road, used to go all the way through the property but they discontinued this road for the subdivisions, and the big conflict is that the road goes right into the middle of their driveway."

Sirvint: "So is the 31' of Fieldstone lane on your property?"

Letourneau: "Yes, but there's no right of way, it's a dead end on their property."

Drouin: "So what's the hardship of moving the barn 19' back, away from this road and into the pasture?"

Letourneau: "They are feeding Angus cattle and a buffalo, and this is the easiest place to access the pasture. Without it, they'll have to enlarge their driveway and right now it's paved and beautiful."

Sirvint: "Is this a working cattle farm?"

Letourneau: "They're really pets if you ask me. But it's really to make life easier for a gentleman farmer of a certain age."

Goodrich: "So you want to put it on the warrant to discontinue the road?"

Letourneau: "Yes. But it's not practical to wait until March to build."

Bill Thomas: "Since there is an existing right of way, could the barn be built further back? Hardship is the elephant in the room; I understand the situation but the idea bothers me. It would be great to have the barn built before winter, but...."

Breckenridge: "I think the word hardship allows for some flexibility to deal with a unique case. I think that word is a good one, and I think the hardship has to do with the land (i.e., the dead-end road being there). That to me qualifies under the broad definition."

Drouin: "The property is not so unique that there's no other place to put that barn. In the past, when we've had interference with right of ways it's because there's a lake behind them, etc."

Stenersen: "Can common sense prevail here? When we go through this nitpicking, people will look at us like we have four heads."

Thomas: "We have to show hardship that's unavoidable. It would be great to have the barn built before winter, but if the road is abandoned then they can build anywhere they want. The state regulations say there has to be an unavoidable issue."

Drouin: "But the variance is the highest level of relief. We could put the barn 10' in another direction. But you will lower the criteria for a hardship."

Thomas: "This will lower the standard for the zoning ordinance."

Stenersen: "This is a unique property."

Thomas: "But they could put the barn anywhere."

Letourneau: "But it would be a financial hardship."

Thomas: "How can they say it's a hardship to build closer to the road?"

Stenersen: "I'm saying that the hardship is the fact that a town road is where they want to build; I think it's perfectly legitimate and plain common sense."

Thomas: "This is the worst thing you could do to this variance ordinance."

Breckenridge asked Dave DuVernay for his insight into the discussion.

DuVernay: "I'm curious as to why you gave the variance to Gail Smith. That barn was gone—it was 200 years old. She wanted to put a shed where the barn was."

Drouin: "There was no other place to build it."

DuVernay: "My recollection is that Gail would have had to cut down a privacy screen of trees."

Breckenridge: "If the town abandons the end of Fieldstone lane's intrusion on their property, then their application becomes moot?"

Drouin: "Yes."

Breckenridge: "But is it reasonable to say that the road being there is not a hardship? It's a right of way."



## 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

Hill moved to go to deliberative session; Breckenridge seconded, and all were in favor.

### **A variance can be granted only if an applicant satisfies all five variance criteria.**

1. **The variance is not contrary to the public interest because:** It is a dead-end right of way that serves only their property. (Unanimous consent)
2. **Special conditions do not exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship:**  
There is no geographical, topographical, or other physical feature to the property preventing avoidance of this unique feature. (2Y: Drouin, Thomas / 3N: Breckenridge, Goodrich, Stenersen) *Defeated – re-worded and re-voted, as below:*

#### **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 special conditions are that there is a dead-end right of way on the property that extends approximately 300 feet into their property, and the right of way prevents the applicant from using the property as proposed. (3Y: Breckenridge, Goodrich, Stenersen/2N: Drouin, Thomas)

a. **The proposed use is a reasonable one because:**

The benefit sought by the applicant cannot be achieved by some other reasonably feasible method because: the dead-end road extends approximately 300 feet into their property. (3Y: Breckenridge, Goodrich, Stenersen/2N: Drouin, Thomas)

3. **The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance because it does not have a negative impact on health, safety and welfare and it has no negative impact on surrounding values.** (Unanimous consent)
  - a. **There is no significant benefit to the Town in denying the variance because:** It meets the spirit and intent of the ordinance. (3Y: Breckenridge, Goodrich, Stenersen / 2N: Drouin, Thomas)
4. **Substantial justice is done by granting the variance because,** if the variance is denied, the applicant will be burdened because he will lose pasture land and his farming operation will be less efficient. (Unanimous consent)
5. **Granting the variance will not diminish the value of surrounding properties.** (Unanimous consent)

Variance granted because: All criteria have been successfully met. Stenersen motioned to approve and Breckenridge seconded.

Vote: 3Y (Breckenridge, Goodrich, Stenersen) / 2N (Drouin, Thomas)

Brenda Derosier, Secondwind Consignment / Case #1034:



## 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

Brenda Derosier, Secondwind Consignment, 43 B Lisa Drive, Rindge, NH 03461 Map 6 Lot 49A-4-1. For a Variance from Article VI, Section C-2 of the Rindge Sign Ordinance prohibiting Off-Premise Signs

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

Joe Hill read the case before the Board and Rick Sirvint summarized the related ordinances.

John Whitcomb owns Class Act Auto on Lisa Drive. Brenda Derosier opened a furniture consignment business on his property and is trying to get more traffic to her business. They would like to put signage up on Lake Shore, and the NHDOT prohibited a blue sign because theirs wasn't a seasonal business, antique store, or a store selling a NH-made product.

Drouin: "You have the landowners permission for the sign?"

Whitcomb: "Yes."

Drouin: "The sign is outside the right of way."

Whitcomb: "It is a difficult corner; there should be signs to show what's up that road."

Whitcomb: "I approached the Planning Board, and Robyn was going to put something together. I would like to have the sign 45 degree angle going north."

Breckenridge moved to go to deliberative session, Goodrich seconded, and all were in favor.

### **A variance can be granted only if an applicant satisfies all five variance criteria.**

1. **The variance is not contrary to the public interest because:** It promotes a local business consistent with the economic development plans of the community. (Unanimous consent)
2. **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 store location is at the rear of the property and the front of the property is elevated and wooded, preventing reasonable visibility. The store location is not visible from the road due to the property's contour. (Unanimous consent)

  - a. **No fair and substantial relationship exists between the general purposes of Zoning Ordinance provisions and this restriction on the property because:**

The variance is needed because the sign ordinance prohibits off-premise signs. (Unanimous consent)
  - b. **The proposed use is a reasonable one because:**

The benefit sought by the applicant cannot be achieved by some other reasonably feasible method because there is no reasonable way to increase visibility of the business and its location other than to grant the variance. (Unanimous consent)
3. **The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance because:** It meets all criteria and the purpose and intent of Section 1 of the Rindge Sign Ordinance. (Unanimous consent)



## 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. **Substantial justice is done by granting the variance.** If the variance is denied, the applicant will be burdened because the public will not know the business exists.  
There is no significant benefit to the Town in denying the variance because the Town benefits from business growth and granting the variance is consistent with the economic plan of the community.  
(Unanimous consent)
  
5. **Granting the variance will not diminish the value of surrounding properties because:** it is consistent with businesses both north and south of the proposed project.  
(Unanimous consent)

A motion was made to grant the variance because: all criteria have been met. Bill Thomas motioned to grant the variance, and Dave Drouin seconded.

Vote: Unanimous consent

### Last Month's Minutes:

The August 23, 2011 draft minutes were approved pending some format changes, including the addition of page numbers, the listing of those sitting on the case vs. those present, and the replacement of the designation "recorder" with "clerk."

Janet Goodrich and Bill Thomas volunteered to review applications for the next meeting. New applications must be read by October 4<sup>th</sup>.

The Board then discussed which Variance Decision wording/template to use going forward.

Goodrich made a motion to adjourn, Drouin seconded and all were in favor. The meeting adjourned at 9:40pm.

Minutes respectfully submitted,  
Linda Stonehill  
Clerk