

# 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

## PUBLIC HEARING MINUTES

**DATE: May 28, 2019, Approved 6/30/19**

*Regular members: Janet Goodrich (Chair), Marcia Breckenridge (Vice-Chair),  
Phil Stenersen, Bill Thomas, Cynthia Childs*

*Alternates: .....Joe Hill, Susan Wessels, Marty Kulla*

*Recusals: .....none*

*ZBA Clerk.....Michele Christian*

*Others Present.....Holly Koski, Sharon Rasku, Wendy Ashe, David Misner, Liz  
Weston, Suzanne Hepburn, James & Lisa Birge, Sally Dunbar, Dawn Dunbar,  
Attorney Patricia Attorney Panciocco, Attorney Gary Kinyon, Jo & Steve  
Verecchia, Deni Dickler, Don Murray, Jamison Van Dyke, Judy Unger-Clark,  
Ashley Saari, Douglas Seppala*

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

*Goodrich gave general information to the audience with regard to the procedure  
for the meeting. She stated that there were three hearings and asked the Board if  
they would like to set a time limit.*

*Stenersen moved that at 9:45 we review where we are at that time and decide  
whether or not to adjourn the meeting, seconded by Thomas. Vote 5-0-0*

*The clerk announced where the notice of the Public Hearing was posted. Town office, police  
station, fire station, library, town website, post office.*

*Hill raised a point of order. The Zoning Board received a memorandum from  
David DuVernay, Rindge Code Enforcement Officer, concerning case #1126, an  
Appeal of an Administrative Decision of the Planning Board dated 3-19-2019. The  
appeal being brought to both the Zoning Board and the Cheshire County Superior  
Court.*

*The P.U.R.D. ordinance was approved by the Rindge voters as an innovative land  
use under NH RSA 674:21 which delegates administration as well as granting  
conditional or special permits to the Planning Board. Since NH RSA 677:15  
provides that its decisions be appealed on to the Superior Court, DuVernay  
recommends that the Zoning Board decline to hear the case for lack of jurisdiction.*

RINDGE BOARD OF ADJUSTMENT

Hill then asked Attorney Kinyon if he concurred with DuVerney and to advise the Zoning Board.

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Attorney Kinyon spoke to the point of order raised by Hill. He stated that the issue that DuVerney is raising in his memorandum relates to whether the ZBA should act at all on the Appeal of an Administrative Decision that was filed by Attorney Panciocco on behalf of her clients versus hearing the appeal and making a decision on whether to grant or deny the appeal. The use of the term jurisdiction would suggest that the Board should consider not even hearing the appeal. Jurisdiction is a legal term that suggest that there are no prerequisites to hear the case. If there had been no Planning Board decision made on the Dale Farm Road application, I would consider that perhaps there is no jurisdiction for the ZBA to hear the case because there was nothing before the Planning Board that was decided upon. The Planning Board made a decision and filing the Appeal of Administrative Decision to the ZBA. Attorney Panciocco is alleging that the Planning Board engaged in the interpretation of the Rindge Zoning Ordinance. If a Planning Board in the exercise of its planning jurisdiction interprets the zoning ordinance of the town and someone involved in the case doesn't agree with the interpretation then it is appropriate for that person to appeal that decision to the Zoning Board. As you may know there is also an appeal filed with Cheshire County Superior Court. Under the law the appeal must go to the Zoning Board first before it can go to Superior Court. Attorney Kinyon stated that the ZBA has the authority to hear the case, but it doesn't mean that the Board has to agree with Attorney Panciocco's arguments. It is up to the board to decide whether they agree with the Planning Board's interpretation of the Zoning Ordinances or if they agree with Attorney Panciocco.

Goodrich asked the Board whether they would like to hear the case or not. Stenersen stated that he would like to hear from DuVerney. DuVerney stated that he issued his memo and would like to leave it at that.

Thomas moved to hear the case before the Board, seconded by Breckenridge. Vote: 4-1-0  
Yea: Goodrich, Breckenridge, Childs, Stenersen, Thomas, Wessels, Kulla Nay: Hill

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Hill read the case before the Board.

## RINDGE BOARD OF ADJUSTMENT

**Case # 1126: Dawn M. Dunbar, 44 Dale Farm Road, Rindge, NH 03461 (direct abutter to property subject to appeal) c/o Patricia Panciocco, Law, LLC, One Club Acre Lane, Bedford, NH, 03110. Appeal of Administrative Decision by the Rindge Planning Board concerning vote taken for a major site plan and major subdivision for a 27 unit (multi-family) Planned Unit Residential Development (P.U.R.D.) for property located at the north side of Dale Farm Road, Rindge, NH 03461, Tax Map 2, Lot 45 in the Residential-Agricultural District. Date of Meeting: March 19, 2019.**

*Sitting on this case: Marcia Breckenridge, Bill Thomas, Phil Stenersen, Janet Goodrich, Cynthia Childs*

*Attorney Panciocco presented the case. She stated that the zoning ordinance was not valid because in 1983 it authorized towns to adopt a PURD. She passed out a copy of the warrant article from 1978 and stated that the town adopted the PURD ordinance five years before it was allowed by the State. She stated that the planning board relied on the ZBA decision for a variance. The relief that was sought was for the frontage on 50' of a Class V road. Attorney Panciocco stated that she sent three letters to the Planning Board detailing why there isn't sufficient frontage. She said that the plow trucks don't go past her client's driveway. She stated that the ZBA was not clear about the amount of frontage and it was not noticed correctly to the abutters. She stated that there is a fundamental problem with the ordinance and now there is an approved development and she understands that there is construction going on there, and it relies on an invalid ordinance. She stated that she plans on bringing this up in Superior Court. Attorney Panciocco stated that there is also the issue of bringing the Class VI portion of road up to Class V standards. She stated that there was no special exception for multi-family dwellings.*

*Breckenridge stated that it seemed to her that Attorney Panciocco was arguing her case when what was being considered at the hearing is who has jurisdiction not on the merits of the case. Breckenridge asked Attorney Kinyon if she was accurate. Attorney Kinyon stated that Breckenridge was correct and he was going to ask Attorney Panciocco a question on the same issue. Kinyon stated that what is being brought up is the reason that the appeal has been brought to the ZBA. Attorney Kinyon gave a follow up on why this is appropriately being handled by the ZBA. The Planning Board has full authority on innovative land uses per RSA 676:5. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use*

## RINDGE BOARD OF ADJUSTMENT

*control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. Attorney Kinyon's question to Attorney Panciocco is to let the ZBA know what she is arguing that the Planning Board did that was in error in interpreting the zoning ordinance and not the merits of the case.*

*Breckenridge stated that Attorney Panciocco was asking the Board to overturn the decision based on the fact that she believes the zoning ordinance is invalid. Attorney Panciocco stated that the problem is that there is no expressed delegation in the ordinance to the Planning Board and the ordinance is invalid and that is her position. Attorney Kinyon stated that his advice to the Board is that it is not the Board's jurisdiction to determine the validity of the zoning ordinance, it is the Board's jurisdiction to determine the interpretation of the ordinance. Breckenridge stated that she feels that she is being asked to make a decision based on what Attorney Panciocco calls an invalid ordinance. Attorney Panciocco stated that in the ordinance it does not say that it is to be administered by the Planning Board as described in the statute. The exception on the appeal is when it is delegated to the Planning Board and the Planning Board makes a decision based on the standards required by the statute. This went to the Planning Board as a site plan with a variance and the merits of the variance where relief was granted as well as the limited language of the PURD regulation is what was discussed as well as frontage. Attorney Panciocco stated that if the Superior Court Judge decides there is a discrepancy with regard to the ordinance he could remand the case back to the ZBA.*

*Attorney Kinyon stated that what the Board wants to hear from Attorney Panciocco is your points. Breckenridge stated that if you are saying that it doesn't state which Board are we to presume since you are saying that it is invalid because it doesn't mention a specific Board. Attorney Panciocco stated that when an innovative land use ordinance was placed on the town warrant it should have been part of the language to be voted on by the legislative body. Attorney Panciocco said that it doesn't say which Board, and Breckenridge said that if it doesn't say then how can there be a violation. Goodrich stated that saying that an ordinance was approved prior to the statute being constructed makes the ordinance invalid doesn't make sense. The ordinance was created and wasn't held to the standards of that RSA because the RSA didn't exist at the time. That doesn't mean that you can't have an ordinance. It was under local control. Attorney Panciocco said that it falls under the enabling legislation where you propose zoning ordinances to be put on a warrant. There are certain*

## RINDGE BOARD OF ADJUSTMENT

*things you can do under the 1925 Standard Enabling Act and a PURD was not one of them. Breckenridge asked Attorney Panciocco if she is saying that anything that happened prior to the legislation was invalid by the town voters. Attorney Panciocco said that she didn't say that. Breckenridge stated that she had said that Attorney Panciocco inferred that because that ordinance wasn't followed and at that time the statute didn't exist. A variance was granted in November for frontage. Stenersen stated that the ZBA variance is not what is being appealed. Attorney Panciocco stated that the Planning Board made its decision based on the decision of the ZBA variance. Goodrich stated that the variance was for the frontage and the appeal time has passed. Attorney Kinyon stated that the Board is asking what points of the zoning interpretation was engaged in by the Planning Board that was part of this process that was misinterpreted. The Planning Board misinterpreted the variance that was granted as granting a variance from frontage which is different from what the ordinance states. Attorney Panciocco insisted that the variance granted by the ZBA was not for frontage. The Board looked through the notice of decision and every point was made about frontage. Dawn Dunbar said that the ZBA gave approval for the PURD. The Board did not give approval for the PURD it was not before the Board at that time. There was much discussion about the frontage and the notice of decision. (clerk's note: The wording on the public hearing notice and notice of decision was taken directly from the application, which the clerk is not at liberty to change.) Breckenridge asked why Attorney Panciocco thinks that the Planning Board misinterpreted the zoning ordinance. Attorney Panciocco insisted that there is no frontage on the road. Attorney Panciocco asked if the Board intends to delegate those ordinances to be waived for a PURD without coming to the Board. Hill stated that Attorney Panciocco has gone further than she should go. He stated that the ZBA was asked for a frontage variance and it was granted. Hill also stated that no more discussion is necessary and that how somebody feels about what is going to happen is not the business of the ZBA tonight. He feels that Attorney Panciocco is off base and it is tying up useful time of the Zoning Board.*

*Hill moved to go into deliberative session, there was no second. Childs wanted to hear the other points from Attorney Panciocco. Attorney Panciocco finished her summary.*

*Judy Unger-Clark, Fitzgerald Road stated that tonight's meeting was not posted on the website and there are minutes missing from the website. Jo Verrechia, Foliage Way asked if the board had gotten her e-mail that was sent in November. Judy Unger-Clark asked if the ZBA went on a site walk. The*

## RINDGE BOARD OF ADJUSTMENT

*Planning Board and ZBA both went on site walks of the road. She stated that there is frontage on the Class V road where the plow turns around.* 735-2964  
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*Attorney Panciocco stated that there are documents in her letters to the Planning Board which proves that there is no frontage. Goodrich stated that Kirk Stenersen Planning Director & Civil Engineer measured and there is 50' of frontage.*

*Hill moved to go into deliberative session, Seconded by Childs. Vote: 5-0-0*

*Childs brought forward the information that the PURD guidelines are under the Planning Board's jurisdiction. The interpretation of the Planning Board is being challenged as incorrect. The Planning Board did not interpret the variance incorrectly. Goodrich stated that the master plan is silent on PURDS. PURDS are part of an innovative land use. The merits of the case are not what is being discussed. It is who has jurisdiction. The Planning board worked from the variance that was granted by the zoning board.*

*Breckenridge motioned to deny the Appeal of Administrative Decision, seconded by Stenersen. Vote: 5-0-0*

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*Wessels read the case before the Board.*

***Case #1127: Doug Seppala, 29 Diane's Way, Rindge, NH 03461, for property located at 29 Diane's Way, Rindge, NH 03461, Tax Map 33, Lot 12-1, in the Residential-Agricultural District for a Special Exception for an Accessory Dwelling Unit as specified in the Accessory Dwelling Unit Ordinance Section 3.***

*Kulla summarized the relative ordinances.*

*Sitting on this case: Marcia Breckenridge, Bill Thomas, Phil Stenersen, Janet Goodrich, Cynthia Childs*

*Doug Seppala came before the Board with plans for an ADU in the upstairs of his garage. Goodrich asked if the septic system was adequate for what he is proposing. Seppala stated that he has a septic for a five bedroom house, currently there are four bedrooms in the house and there will be one in the ADU. Goodrich asked what he had for egresses. Seppala stated that he has one door and egress windows. Breckenridge asked if the ADU met fire standards and Seppala said yes that it does. The ADU will be 700 square feet. There will not be any noise, odors etc. There is a requirement that there be one common interior access between the*

## RINDGE BOARD OF ADJUSTMENT

ADU and the principal dwelling structure. *Doug stated that his father has the same type of unit in his home. Childs stated that since it is over the garage it is not feasible to have an entrance into the house. Breckenridge asked if we could put conditions on the Special Exception. There was discussion about the common access. Childs stated that perhaps a door could be put in to go into the garage. Seppala stated that his father got approval for his unit less than a year ago.*

*The clerk gave the case file #1107 to the Chair to review the application of Aaron Seppala. It was determined that Doug Seppala did not need a Special Exception because what he is actually seeking is a multi-family dwelling which is allowed in the Residential-Agricultural district. Seppala withdrew his application for a Special Exception.*

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*Hill read the case before the Board.*

***Case #1128: Wendy Ashe, 153 Lunenburg Road, Townsend, MA, 01474, for property located at 65 Cleaves Road, Rindge, NH 03461, Tax Map 40, Lot 4 in the Residential District for a Variance from Article IV, Section B-2 of the Rindge Zoning Ordinance to permit a building closer than fifteen (15) feet to an abutter's property line and less than fifty (50) feet from a right of way.***

*Wessels summarized the relative ordinances.*

*Sitting on this case will be: Janet Goodrich, Marcia Breckenridge, Bill Thomas, Phil Stenersen, Cynthia Childs*

*Wendy Ashe stated that they currently have an approved plan for a very small house on 65 Cleaves Road. The house is 12 x 20 and what they would like to do is have the second store expanded 2 feet on either side and four feet on the front to allow them more living space. All of the site work has been done, septic is approved and installed. David DuVernay said that the foot print will be changed. Stenersen stated that they have a grandfathered use and it can be expended. They are still in compliance without talking to the ZBA. The need a variance to expand a current non-conforming use.*

*James Birge is an abutter to the Ashe property. He is concerned what the property will look like if the approved building plan expands the second story. Without a measurement he is concerned that they don't truly know the distance of the house to his property line. The distance from the slab to the property line is 24 feet. With two additional feet added to the house it is still in compliance with the zoning ordinance.*

## RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD  
RINDGE, NH 03461

Deni Dickler wanted to know how close they are to the shoreline buffer. The side is 24 feet. The roof is encroaching the wetlands buffer, however the building has been approved by DES. Dickler asked if Ashe had been reviewed by the Conservation Commission.

Birge stated that the pre-existing structure was a shed and he argued that this structure would be larger. Breckenridge asked Ashe if the slab had been enlarged and she said no. Birge stated that it is a much larger slab than what was there before. The building inspector has already given them permission. Stenersen stated that the structure would be more conforming than the original building. Breckenridge asked DuVernay why they are here and he stated it is because they need a variance for the overhangs on the second story.

There was discussion about the patio that was part of the original building which is not going to be part of the new structure. Gary Duquette commented on the square footage. Judy Unger-Clark asked what the square footage was for the patio which is not going to be part of the new structure.

Stenersen stated that what they need is a variance to expand a current non-conforming use. Dickler stated that she is concerned that there has been no recommendation from the Conservation Commission because there is encroachment on wetlands. The next meeting is Monday, June 10. She stated that she had no problem with the application being approved pending the Con Comm recommendation. Birge agreed that they should go to Con Comm and the new structure will be closer to the wetlands.

Childs made a motion to go into deliberative session, seconded by Breckenridge.  
Vote: 5-0-0

### Decision Tree for Variance

1. The variance would not be contrary to the public interest because it does not threaten public health safety or welfare and is consistent with the spirit of the ordinance
2. Granting the variance would do substantial justice because it is the maximum use of the foundation 5-0-0
3. The Variance would consistent with the spirit and intent of the Rindge Zoning Ordinance and is consistent with the area and character of the town.
4. There is no evidence that granting the variance would not diminish surrounding property values because it is an improvement of the previous use of the property.



RINDGE BOARD OF ADJUSTMENT

5a. No fair and substantial relationship exists between the general purposes of the zoning ordinance provision and the specific application of the provision to the property because it is grandfathered property. Vote 5-0-0

5b. Proposed variance would be a reasonable on because they are improving the property and it is a very small house and is consistent with the existing residences. Vote 5-0-0

5. Special conditions do exist on the property because the square footage of the house is small and the land area is limited due to the wetlands.

Thomas made a motion to grant the Variance to expand the second floor two feet on either side and 4 feet on the front with the condition of a favorable recommendation from the Conservation Commission. Seconded by Breckenridge, Vote 5-0-0

**The Variance has been Granted with conditions.**

Wesssels and Hill will be the reviewers for June.

Hill made a motion to accept minutes for April and seconded by Childs, Vote 3-0-0

Cynthia moved to adjourn, seconded by Bill 5-0-0, Vote 3-0-0

**Adjournment 10:10 PM**

Respectfully Submitted,

Michele Christian, Clerk