

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Meeting
January 6, 2011
Approved as amended 2/3/11**

I. CALL TO ORDER

Paul Monziona, Chairman, called the meeting to order at 7:04 p.m. and requested that all members of the public sign in.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monziona, Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

John Dever, Department Head/Building Inspector and Code Enforcement Officer
Lou LaCourse, Clerk
Tim Morgan, Member

Steve Miller, Member, is also the Chair of the Budget Committee; there was a Budget Committee meeting this evening and due to that conflict he was unable to attend the ZBA meeting. Mr. Miller did arrive at 8:05 p.m.

Tim Kinnon, Vice Chair, was not present at this meeting.

III. APPOINTMENT OF ALTERNATES

There are no alternates to appoint. There are three members of the Zoning Board of Adjustment present so there is a quorum; the Board is able to proceed with all cases on the agenda. Chairman Monziona made an appeal to the public in attendance that anyone interested in serving on the ZBA as an alternate should contact the Planning Department.

IV. STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds which the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

V. APPROVAL OF THE AGENDA

J. Dever brought forward a request that the Tibbetts Variance, listed as Previous Business under Other Business, be moved to first on the agenda. Attorney Broderick is representing the Tibbetts' and the request came from her.

T. Morgan made a motion to approve the agenda in the amended fashion as described by the Code Enforcement Officer. L. LaCourse seconded the motion which passed with three votes in favor and none opposed.

VI. OTHER BUSINESS

1. Previous Business – Tibbetts, withdrawal of Variance request.

Catherine Broderick of Westcott, Dyer, Fitzgerald and Nichols, was at the meeting representing Bob Tibbetts and his daughter, Heidi Beaudoin. She explained that Mr. Tibbetts and Mrs. Beaudoin have discovered that there may be an alternative solution for them and they are asking to withdraw the variance application without prejudice at this time, which will allow them to come back if a variance is necessary in this case. There are some alternatives and the applicants have authorized her to speak with the Selectmen and to work with the Planning Board and Town Counsel to hopefully find a resolution in this case.

Attorney Broderick delivered representational authorization to J. Dever.

T. Morgan made a motion to accept the request for withdrawal of the variance in the Tibbetts matter. L. LaCourse seconded the motion which passed with three votes in favor and none opposed.

VII. CONTINUANCE

Case #Z10-25 Richard and Nancy Coskren	Map 20 Lot 3	Variance 1683 Mount Major Highway
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Application submitted by Attorney Catherine Broderick on behalf of applicant Richard and Nancy Coskren to request a variance from Article 400 Section 420B Required Frontage; to provide the ability to subdivide into 2 lots. This parcel is located in the Rural Zone.

The case was read into the record by Chairman Monzione. As he has done in the past for reasons previously stated on the record, P. Monzione recused himself from this case and appointed L. LaCourse as acting Chair.

Attorney Broderick apologized to P. Monzione for her office's misspelling of his name; they will correct that going forward.

L. LaCourse deferred to T. Morgan as to how to proceed; he has not yet been in a situation when there were only two sitting members.

T. Morgan apologized on behalf of the ZBA and the Town of Alton because a quorum was not present this evening. This is the fourth or fifth time they have had to continue, and he apologized to Attorney Broderick and her client. He suggested that this case be moved to the next regularly scheduled meeting, the date of which is February 3, 2011, and asked Attorney Broderick if that was doable for her and her client. Attorney Broderick stated that February 3, 2011, would be fine; she went on to thank the ZBA for their efforts. She commented that the struggle to find members to sit on this Board is global; she hopes that town citizens and maybe even people present at the meeting tonight who have an interest in such matters can step up to serve. There is a lot of support from experienced members of the Board and OEP; there are a lot of educational opportunities out there as well. She sits on the Board in Sandwich, NH; they are lucky to have five full members and a couple of alternates. She understands the struggle, and they look forward to coming back in February.

Attorney Broderick went on to thank John Dever for his communication to her and Attorney Nix so they don't have to make the trip unnecessarily. She realized that tonight was a last minute issue. She will continue to keep Attorney Nix and his clients posted; they come from out of state.

This case was continued to the meeting on February 3, 2011.

VIII. REHEARING

P. Monziona returned to the table and resumed his position as Chair.

Case #Z10-26 Michael and Kathleen Currier	Map 2 Lot 19	Rehearing of a Variance 55 Prospect Mountain Highway
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Rehearing by request for the Variance granted on October 7, 2010, to Article 400, Section 401, Table of Uses, to allow an onsite, seasonal Function Facility.

Michael and Kathleen Currier came to the table and introduced themselves. P. Monziona stated that since this is a motion for rehearing, he assumes they could proceed with having the applicant re-present their matter. He did say that the record is pretty complete and detailed as to all of the evidence and arguments and the presentation previously. He asked the Curriers if they had a chance to review the motion for rehearing and the grounds stated; Mrs. Currier answered that she had reviewed those. P. Monziona explained that it was entirely up to the applicant; they had as much discretion as they thought they would need to do this. He went on to say that the arguments made previously are well documented in the record; it might be more useful for the Board to have the applicant address the issues of the motion for rehearing, but he would leave that up to them. He went on to say that he is inclined to have the moving party go first; if there was no objection from the applicant, he would ask the party that was seeking to have the matter reheard go first so that the applicant would not be burdened with having to re-present their entire case, having presented it once already. One of the objectors has filed a motion saying that the Board should rehear this case because mistakes were made; this is really a rehearing that focuses on giving the ZBA an opportunity to see if mistakes were made. There was no objection from the Curriers; the objector was brought forward to go first. The Curriers would then have a full opportunity not only to respond but also to present any evidence or facts that they might wish.

P. Monziona requested that the party representing the objectors come forward. Attorney J. Brandon Guida, Cynthia Balcus, and Richard and Carol Locke came forward. Attorney Guida stated that he is representing the appellants. He explained that he would go through the arguments they put forth in their material and maybe supplement that a little; during the presentation he would also answer questions.

T. Morgan asked to make a request before Attorney Guida began; he requested that Attorney Guida consider making a formal apology to this Board. In one of the paragraphs in his letter, Attorney Guida said that the Board's decision smacks of favoritism, and then he said that the ZBA ignored that fact that the applicant was a long-term town employee. In fact, T. Morgan has talked to members of this Board and no member of this Board at the time of the presentation was aware that Mrs. Currier had worked for the town or been a town employee, and there is no basis for Attorney Guida to make a comment that this Board made any of its decisions in a manner favorable to the applicant. He thinks it is an unfounded and baseless accusation and frankly, as a member of the Bar it is unprofessional.

Attorney Guida stated that he would apologize if the Board did not know that the applicant was a long term town employee; that is a fact he assumed people knew because she was a town employee. He does not consider his conduct unprofessional; when he does these, as T. Morgan knows if he does land use and zoning law, they must address every issue. He prepared this (referring to his letter) as he would prepare for court. He has never seen it in his professional career where a ZBA had the authority or thought they had the authority to waive the fees for an applicant. It is unheard of because there is no legal authority. If "smacks of favoritism" was too strong, certainly he will apologize for that, but that is what he would plead to a court and he does not think it is unreasonable to say that because the ZBA heard the applicants before they paid their fees, he does not think that is an unreasonable conclusion. If it was too strong, he certainly would withdraw it, but that is the way he would argue it in court.

P. Monziona stated that when they heard the motion for rehearing, he had made a similar comment; just for the record he questioned Attorney Guida to clarify that the reason he was accusing the Board of favoritism was that they waived the fees. P. Monziona wanted to know what other evidence or facts Attorney Guida had in accusing the ZBA of that in his papers. P. Monziona went on to say that he is a lawyer and he litigates and he does not do that unless he has a basis; he wanted to know what Attorney Guida's basis was. Attorney Guida answered that he did not accuse; he said it "smacks." In other words, it could lead to the reasonable conclusion that when a Town Attorney issues a significant letter which states that "there is a stink about this file that is going to have to be exposed to the freshness of public review," and the ZBA then waives the fee, in his arguments to the court he would say it does smack of that. If there was no intention of that, he would certainly withdraw it, but it is not out of the question. The Board certainly was aware that there was a Cease and Desist order, and the Town's own attorney had said that this file stinks; for this Board to waive the fee, which is not within its authority, is a very strong action by the Board.

P. Monziona voiced that he appreciated Attorney Guida's statement; he went on to explain that the Board had been told that a fee had been paid and that the applicant had gone through a previous process already, and that the applicant was having to come back and go through yet another process, and they made that clear on the record when they determined that the additional fee would not be required. He did not see any authority in the Motion for Rehearing that they did not have authority under those circumstances not to require an additional fee and therefore to grant a waiver of that additional fee. It became a moot issue at the time the Motion for Rehearing was heard because they were informed that the fee had in fact been paid.

Attorney Guida voiced understanding that the fees have been paid; he went on to say that if his comments were too strong, he would certainly take them back, but that is the way he would argue it to a court. He found it unprecedented. T. Morgan and P. Monziona both thanked Attorney Guida for his comments.

Attorney Guida began his presentation; they are really arguing legal issues here, and the first he would like to talk about is whether the variance is contrary to public interest. Does it violate the objectives of the Zoning Ordinance and would it alter the essential character of the locality, and would it threaten the public health, safety and welfare. When he reviews the Master Plan and the questionnaire that went to the citizens, it is clear to him that it is their desire to maintain a quiet, small town atmosphere. It seems that, and he is not sure of the extent to which noise pollution can be appreciated unless it is by the citizens living nearby. The Board had testimony...

P. Monziona apologized for interrupting; it occurred to him that he had not said previously, and this would apply both to the applicant and to Attorney Guida's clients, that although Attorney Guida could appreciate that the statute does not require that the Board do so, this Board in the past with every other case he can remember since he has sat on the Board and since he has been chairman of it, they have offered the party before them when they have only three members present an opportunity to decline to go forward. The statute says if they have a quorum, they can proceed and legally make decision. The standard practice has been, and he sees no reason why not to offer that here, is that where there are only three of them present they have consistently offered applicants and anyone else an opportunity to reschedule their hearing to a time where there are more members present. For a decision to be made here there would have to be a unanimous decision of all three sitting members. Since they have done that consistently in the past, he would offer the applicant an opportunity to say whether they wish to proceed under these circumstances; he would offer the same opportunity to Attorney Guida and his clients.

The Curriers stated that they would proceed. Attorney Guida requested a moment with his clients; after conferring, he stated that he and his clients appreciated the offer and would accept it. They requested a continuance of the hearing and appreciated that the Board does this. P. Monziona explained that this is a standard procedure that this Board follows and in light of all the facts of this case, including the accusation that it "smacks of favoritism," although he now understands the basis of that and what has come since then, he wants to make sure that after this process, someone doesn't bring forward that in every other case this Board has heard

they have always offered that to an applicant. In this case, where they have brought the request for rehearing, and they are the moving party, it is appropriate to offer them that same opportunity.

Attorney Guida stated that he would make the request to have this case continued; he also went on to say that if the Board was not aware that the applicant was a long-term town employee, he would apologize for that. That was an assumption on his part. P. Monziona voiced his appreciation for that and went on to say that neither he nor Tim Morgan were aware of that at the time.

P. Monziona restated that this Board has consistently, since he has been on this Board, and even though the statute does not require that they do it, when there are only three members present and a unanimous decision is needed, as a standard procedure of this Board offered the applicants and anyone who this is going to affect an opportunity not to proceed with three members. The parties who have filed the motion for rehearing have requested that this case be continued. He asked if the next meeting agenda in February was desired; Attorney Guida stated that would be fine.

T. Morgan made a motion to continue the rehearing of Case #Z10-26 until the meeting on February 3, 2011. The policy of this Board is also to limit the number of continuances but because the practice has been that if there is not an adequate Board, the continuance is not counted against the applicant so he added that this continuance should not be counted against the applicants. L. LaCourse seconded the motion which passed with three votes in favor and none opposed.

P. Monziona stated that he is sure that at the next meeting, Mr. Miller will be in attendance as there will not be a Budget Committee conflict. Mr. Kinnon who has historically attended these meetings will also hopefully be in attendance so there would be a five member Board at that meeting.

At this time, the Board took a recess to facilitate review of the minutes of the December 2, 2010, meeting.

IX. OTHER BUSINESS

During the recess, Member Steve Miller joined the Board (8:05 p.m.)

2 – New Business: Minutes of December 2, 2010

P. Monziona stated for the record that there were not any typos or errors in the minutes; he complimented the recorder for a great job in putting this record together. T. Morgan seconded that; he felt that the minutes were exceptional.

L. LaCourse made a motion to accept the minutes of the December 2, 2010, meeting as is. T. Morgan seconded the motion which passed with four votes in favor and none opposed.

3 – Correspondence

There was none.

Mr. Miller stated that going forward there are no more foreseeable conflicts due to Budget Committee and he apologized for not being at the meeting this evening. P. Monziona explained that at the beginning of the meeting he had stated that they might be able to call him up to this meeting, but then he understood that the Budget Committee was dealing with some very serious issues that required his presence and that he was unable to attend. That was explained to the public and to the applicants. Also, the first case was continued because he (P. Monziona) had recused so there was no quorum, and in the second case, as is the custom of the ZBA, the applicant and the moving party were given an opportunity to request a continuance given that they would need a

unanimous decision of all three sitting members. The applicant wanted to proceed, but the moving party that is seeking the rehearing did not. That case is continued to the next meeting.

X. ADJOURNMENT

T. Morgan made a motion to adjourn. L. LaCourse seconded the motion which passed with four votes in favor and no opposition.

The meeting adjourned at 8:08 p.m.

The next regular ZBA meeting will be held on February 3, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session