

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
February 5, 2015
Approved as presented 3/5/15**

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:00 p.m.

II. INTRODUCTION OF CODE ENFORCEMENT OFFICER AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, Board members, and Staff:
John Dever, Code Enforcement Officer
Paul Laroche, Member
Steve Miller, Member

Lou LaCourse and Tim Morgan, also members of the Zoning Board, were unable to attend this evening.

III. APPOINTMENT OF ALTERNATE

With only three members present alternates could have been appointed, but at present there are no alternate members to the Zoning Board.

P. Monzione explained that two continuances may be granted at the request of the applicant; a third request for continuance would require that the applicant begin the process anew. In the case of a three member Board, which does legally constitute a quorum, a continuance would be granted at the request of the applicant without penalty to the applicant. The reason for the “free” continuance would be that cases heard by a three member Board would have to meet all criteria with unanimous support of all three sitting members. Both applicants with cases being heard this evening chose to go forward with the three-member Board.

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

S. Miller made a motion to approve the agenda as presented. P. Laroche seconded the motion which passed unanimously. (3-0-0)

VI. NEW APPLICATIONS

Z15-03 Patricia Scribner	Map 63 Lot 20	Variance 12 Peters Path
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On behalf of Patricia Scribner, Mark Perlowski is requesting a Variance from Article 300, Section 320 B.2.b of the Zoning Ordinance to permit expansion of an existing front porch to accommodate a new stairwell during reconstruction of the existing home and an overhang to protect the steps to the front door. This property is located in the Lakeshore Residential (LR) zone.

P. Monziona read the case into the record. Mark Perlowski came forward to present.

The application was reviewed for completeness. There was discussion about the letter of agency, as Mr. Perlowski is not the property owner at this time. J. Dever stated that an agency letter had been received but copies were not included in the packets; additionally, the application is signed by both Patricia Scribner and Mark Perlowski. The submitted agency letter was eventually located and copies were made for the members.

S. Miller made a motion to accept the application as complete; P. Laroche seconded the motion which passed unanimously (3-0-0).

Mark Perlowski stated that he is in the process of purchasing the property; closing is set to take place February 6, 2015. His plan is to raze the existing one story camp, leaving the existing foundation, septic, and well, and then construct a two story home using the existing foundation. In order to do the second story, a staircase meeting current building codes needs to be constructed in the space currently occupied by the existing sun porch, with an addition of 2.5 feet to each end of the sun porch. Currently this is dead space, and the addition would not encroach on any setbacks.

S. Miller confirmed through questioning that the exact footprint is going to be used, but the structure will be higher. Mr. Perlowski confirmed and added that he had been going to try to save the existing one story and just build above, but found that the existing structure would not meet current code. S. Miller asked about the pitch and height of the new roof. Mr. Perlowski stated that the roof would be an eight pitch, and the height would be about 32', which is within the 35' height restriction.

J. Dever explained that Mrs. Scribner had come to the Zoning Board in 2009 and was granted a Special Exception to add a second floor; she was also granted a waiver by DES. The only real change to the originally granted Special Exception is the expansion of the sun porch to gain the space needed for the stairwell to meet code. The lot is so small that there is encroachment pretty much everywhere. The notice of decision for the 2009 decision is included in the packet with this application. S. Miller questioned whether the 2009 decision would still be valid, as it was never acted upon; he also wondered if it would revert to the new owner. J Dever stated that at the time it was granted, there was no requirement to act on the decision within a certain timeframe, and P. Monziona added that the decision for a Special Exception or Variance runs with the land and so would revert to the new owner.

P. Monziona clarified through questioning that the intent is to put the second floor on the building as allowed by the Special Exception granted in 2009; the building will be constructed in such a way that it will violate Section 320 B.2.b because the sun porch needs to be expanded to allow for stairs to be constructed within the structure. Mr. Perlowski reiterated that the main house itself will stay exactly within the existing footprint; the only change will be to make the porch five feet wider to allow for the

staircase. P. Monziona clarified through questioning that the structure is non-conforming due to setbacks, and that the entire structure is not within the setback area. J. Dever confirmed that the center part of the structure is within the building envelope, and that the expansion is not further into the setback.

P. Monziona asked if converting the porch for the staircase will increase the living space; Mr. Perlowski answered that it will just be staircase, not a room of any kind, but it will be within the living space inside the house. Mr. Perlowski used the plan provided with the application to show that the main house will not change in any way from the current structure; he also pointed out the existing porch and how it will have to be expanded to accommodate a stairway that meets current code requirements. The porch roof will be approximately 3 feet lower than that of the main house. The porch encroaches on a right of way setback. There was some discussion concerning the original Special Exception of 2009 and whether it is still valid, as the one story structure is going to be removed, a new two story structure is going to be constructed, and the porch is going to be converted into inside living space to accommodate the staircase to the second floor.

S. Miller questioned whether this structure would be three stories with the inclusion of living space, including bathrooms and outside egress, in the basement; J. Dever explained that only stories above grade are counted.

J. Dever explained the term “habitable space;” bathrooms, hallways, and staircases are not considered habitable space. P. Monziona agreed, but added that he is not sure the definition of “living space” as used in the Town of Alton Zoning Regulations exactly translates the same way.

P. Monziona questioned the validity of using the Special Exception granted in 2009 to complete the second story of the structure as it was only for a second story and did not include removal of the first floor and construction of a completely new structure. J. Dever cited the minutes of the meeting at which the Special Exception was granted and noted that removal of the existing structure and all new construction of a two story structure was addressed. P. Monziona acknowledged that the Special Exception would cover the building of the new structure, and that the only issue would be the expansion of the porch into the right of way setback. P. Monziona asked how much further the structure will go into the right of way setback; the total square footage impact will be 20 square feet on both sides for a total of 40 square feet. The structure is not going to be any closer to the right of way; the expansion is in the width. The edge of the porch is approximately 11 feet from the edge of the right of way, which is a 100’ railroad right of way.

S. Miller asked what the unnecessary hardship would be if this variance were not granted. Mr. Perlowski answered that he has not purchased the house yet; if he can not locate the staircase within the house, he would probably cancel the purchase. S. Miller asked if there is any other alternative that the applicant knows of; Mr. Perlowski answered that the house is quite small and that locating the stairs within the existing space would severely limit the use, especially on the second floor. The house is 20’ X 38’, so it is about 760 square feet on each floor. P. Monziona questioned whether the decks on the current structure would remain the same; Mr. Perlowski answered that the decks on the new construction would be the same as current.

J. Dever stated that an abutter had come in to review the plan and voiced approval, but did mention concern that Peters Path is very narrow and care would have to be taken with staging of materials and equipment so as not to block the way. P. Monziona commented that how the contractor implements the construction is not part of the ZBA concern; construction needs to be carried out in compliance with all existing regulations with regard to noise, nuisance, etc.

The floor was opened to public input; there was none. Public input was closed without further comment from the applicant.

WORKSHEET

P. Larochelle stated that the variance **will not** be contrary to the public interest. This is going to be a good location to construct this home, and will make it a better property. P. Monziona agreed and added that all of the criteria that were considered in granting the original Special Exception are applicable here, and these were dealt with by the Board at that time. This construction will be an improvement to the area and therefore in the public interest. S. Miller agreed.

P. Monziona stated that the request **is** in harmony with the spirit of the zoning ordinance and the intent of the Master Plan, and with the convenience, health, safety and character of the district within which it is proposed. The Lakeshore Residential zone is very strongly protected, but the Master Plan does deal with maintaining the beauty of the lake and the character of the town, and this is an improvement to that property. Also, it is an improvement to the character of the district in which it is proposed and by making a new and safer building, the health and safety of the structure will be improved. S. Miller agreed; it is very similar to other homes in the area and it will blend in very nicely, as required by the Master Plan. P. Larochelle agreed for all reasons stated.

S. Miller stated that by granting the variance, substantial justice **will be** done; there is no change in use and it will remain a lakeshore residence with significant improvement to the house which will increase surrounding values, and the addition of the porch will make the house more livable and comfortable with the addition of only 40 square feet, which is just a minimal constraint. P. Larochelle agreed. P. Monziona agreed and added that the structure is not moving any further into the setback to make it further encroaching in that way. Also, this is a building that was granted a Special Exception for a second floor, but putting the staircase in to code seems to have not been fully explored at that time. This variance will allow for the staircase to enable reasonable access to the second floor, in a way that complies to code.

P. Larochelle stated that the request **will not** diminish the value of surrounding properties; if anything, it will improve property values in the neighborhood and will be more conforming with lakeshore properties and will be a better property that should increase the value of this home and those surrounding. P. Monziona agreed and added that no testimony was given to indicate that there would be diminution of values. S. Miller agreed.

P. Monziona stated that for purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; **no** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; the proposed use **is** a reasonable one. The proposed use is certainly reasonable; the use will not change and will continue to be used for residential purposes. The property is located within the right of way setback as a grandfathered structure; that is a special condition and it will continue to be that. This plan is not going to extend the encroachment any further into the setback or get any closer to the right of way, and it will vastly improve the property. S. Miller agreed and added that there is evidence that if the variance is not granted the house would not be as comfortable as the new owner would like and could cause him to pass on the purchase. P. Larochelle agreed.

S. Miller made a motion to approve the request for variance in Case Z15-03. P. Larochelle seconded the motion which passed unanimously without further conditions. (3-0-0)

Z15-04 David Bruhm	Map 44/Lot 53	Variance 134 Black Point Road
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David Bruhm is requesting a Variance from Article 300 Section 327 A.2 of the Zoning Ordinance to permit construction of a garage that will encroach into the Town's 25 foot right-of-way (ROW) setback. The front of the proposed garage will be at the ROW line and approximately twenty-five (25)

feet from the edge of the existing roadway. This property is located in the Lakeshore Residential (LR) zone.

P. Monzione read the case into the record. David Bruhm came forward to present the case.

The application was reviewed for completeness. **S. Miller made a motion to accept the application as complete. P. Laroche seconded the motion which passed unanimously. (3-0-0)**

Mr. Bruhm explained that he is trying to build a garage across the street from his property; there is a right of way that goes through his property. The proposed garage would be 25 feet from the existing roadway. The existing road is unlikely to ever be widened; the west side of the road is the only side that could be expanded, but that would take a great deal of expensive construction work. Expansion to the east side of the road would require removal of homes that are already within the right of way setback. His interpretation is that there was space deeded to put in the road, and that when the road was done, a five foot setback was taken from the edge of the road. His garage would be within the 25' right of way, but it will still be 25' from the edge of the road. Even if the road were to be expanded to a normal width of 24', he would still have 17' to the garage. His hardship is the shoreline setback and steepness of the property. He has already obtained all necessary DES and town permits.

S. Miller questioned why the applicant could not dig into the slope to construct the garage; Mr. Bruhm explained that in order to go back far enough, he would probably end up with a 75' wall; the westerly side of Black Point Road is very steep. J. Dever estimated the slope at approximately 30%. Mr. Bruhm explained that he has everything lined up to begin, but is not sure once he starts digging at the proposed site whether he will actually be able to construct there due to the amount of stone on the site.

P. Monzione asked about the lot; there is a garage currently existing, but it is too small for a vehicle. It can not be expanded because of lot coverage issues with DES. P. Monzione asked for clarification of the right of way and the travel way. The travel way is within the right of way. P. Monzione asked if there are trees on the side where the garage is to be constructed; Mr. Bruhm answered that there are some trees there. P. Monzione clarified through questioning that the garage is going to be right at the edge of the right of way, 25 feet into the right of way setback, but still 25' from the travel way; Mr. Bruhm explained that it will be right at the edge of the right of way because of shoreline and topography constraints. The travel way is paved. Mr. Bruhm stated again that even if the road were ever expanded to be accepted as a town road, his garage will still be 17' from the edge of the travel way. Mr. Bruhm cited a garage in the area that is on a flatter lot, but the garage is within an arm's length of the roadway entirely within the right of way.

S. Miller asked about the location of the leach field; Mr. Bruhm explained that it is on the lake side, with the house. The well is also with the house. Plowing is done by a contractor hired by the association. Mr. Bruhm explained that the association can not even raise the funds to repave the road, never mind to do the work it would take to make it acceptable as a town road.

P. Monzione clarified through questioning that this is a single lot of record with the right of way cutting through the lot. J. Dever pointed out that a number of power poles going through the area are in the right of way. Mr. Bruhm stated that he has had the power company out to look at what he is trying to do, and there is no conflict with them. P. Monzione questioned the right of way requirements on a private road; J. Dever explained that the right of way setbacks apply to both private and public ways. P. Monzione stated that the Town's 25' setback requirement would trump the 5' association requirement as stated in the property deed.

S. Miller asked the applicant to address the email received from Mr. Youngblood on behalf of the Association. Mr. Bruhm explained that he had gone to an Association meeting in April and asked the chair what he should do about this situation; there was an open discussion at the meeting and he was told to go ahead, as he already had his permits in place. Mr. Youngblood lives two or three houses down from him, but he does not know what Mr. Youngblood's interest might be, except that he is on the road committee and may think there is going to be encroachment on the road. S. Miller asked in general if the Association has any standing as to the decision on the variance. P. Monziona explained that his only thought on Mr. Youngblood's concerns is whether or not he is someone who should have been provided notice. There is a requirement that all abutters receive notice by mail of the hearing. When an applicant is part of an association, the association itself is probably an abutter because they are a property owner of the land that abuts, i.e. the right of way.

Mr. Bruhm stated that he was not aware they needed to be noticed, and no one had mentioned that to him when he came in. P. Monziona explained that the definition of abutter is being clarified for vote at the Town Meeting in March. The applicant has the responsibility to determine who the abutters are and who should receive notice; if the Association as a legal entity has property that directly abuts the applicant's property, or is an abutter as defined in the current codes, then the Association probably should have received notice of the hearing. Mr. Youngblood, in his email, stated that he did not know about this hearing.

S. Miller asked if the Association has the right to appeal a decision of the Zoning Board; P. Monziona answered that they do, as any other abutter does. J. Dever pointed out that Mr. Bruhm went through with a voluntary lot merger in order to avoid the issue of having an accessory structure only on the lot. Permits had been issued before the right of way issue came to light. P. Monziona stated that when the voluntary lot merger was done, that encompassed Black Point Road, and the right of way for Black Point Road is owned by somebody, in this case the Association. That means the Association has a property interest in land abutting the applicant property. Getting back to the email from Mr. Youngblood, his main point was that he was never notified of the hearing, and if the Association should have been notified, there could be a flaw in the process. Mr. Bruhm stated that in that case, everyone owns the right of way, because everyone pays for the road. P. Monziona explained that the Association could be considered a legal property owner, and may need to be notified as a property owner.

This discussion went on; Mr. Bruhm asked how the Board has handled issues involving Associations in the past. P. Monziona explained that each case is different but that the general requirements of an application apply the same in every case. One of the requirements in every case is that abutters are notified through the mail; the applicant has the obligation to know who the abutters are that need to be notified. Mr. Youngblood is stating that he speaks for the Association and he didn't know about this, so that raises the issue of whether the Association should have received notice as an abutter. Mr. Bruhm stated that he has spoken to his attorney about this and she never mentioned needing to notify the Association.

P. Monziona explained that this Board does not give legal advice and that they do not want to tell applicants what should or should not be done. When an issue is raised that they did not receive notice and can not attend the hearing, the question comes up of whether they should have received notice. If the Association was an entity the applicant was required to give abutter notice to, and it did not happen, they would have a right to request rehearing or even to appeal the decision to the Superior Court. S. Miller stated that he is uncomfortable with the substantial justice criteria if there are indeed abutters that should have been noticed. He would welcome legal guidance either from the applicant's attorney or from town counsel.

P. Monziona referred back to the email from Mr. Youngblood which states that he and all other members of the Association Board were unable to make arrangements to attend.

The abutter list was reviewed; the three abutters noticed are those directly adjacent to Mr. Bruhm's property. S. Miller asked who abuts the property to the rear of the garage; Mr. Bruhm doesn't know who that abutter is. S. Miller pointed out that no matter how far back the property goes behind the garage, whoever owns the land adjacent to that should be noticed.

P. Larochelle asked if a continuance should be sought until the abutters not already noticed have been notified. This was discussed briefly and the continuance option was explained to the applicant, who would have time before the next meeting to notify abutters.

S. Miller made a motion to continue Case Z15-04 until proper abutter notification can be made. P. Larochelle seconded the motion.

P. Monziona asked the applicant if he wants to continue. He asked S. Miller to amend the motion to state that the continuance would not count as one of those allowed by statute, and that the continuance be specifically to the March 5, 2015 meeting. Mr. Miller agreed to amend the motion.

The Board voted unanimously to approve the motion to continue Case Z15-04 to the March 5, 2015 meeting, with continuance not to be counted against the applicant. (3-0-0)

Mr. Bruhm agreed to look into additional abutters who need to be notified, which may include the Association.

VII. OTHER BUSINESS

A. Previous Business: Rehearing for Case Z14-28. Per Town Counsel, the abutter does have standing to request a rehearing; this had been questioned at the January, 2015, meeting. P. Monziona stated that the rehearing would be granted only if after review it was determined that a mistake had been made by the Board. The variance had been granted in December, 2014; the abutter, Shawn Kineen, requested copies of the minutes and asked for a rehearing.

P. Monziona asked S. Miller whether he was comfortable with participating in a decision on whether to grant the rehearing, as he had not been present at the January meeting when the question was first raised. S. Miller stated that he would in fact recuse himself from discussion until he had a chance to review the facts. Due to his recusal, there was no longer a quorum to determine whether to grant a rehearing. This question of whether to grant a rehearing would have to be continued; that decision to continue could be addressed by the three Board members present.

P. Larochelle made a motion to continue the Rehearing Request to the March 5, 2015 meeting, pending a full Board. S. Miller seconded the motion which passed unanimously. (3-0-0)

B. New Business: S. Miller is running unopposed for his ZBA seat. J. Dever has a possible candidate for an alternate member of the ZBA.

C. Minutes: October 16, 2013 – On page 5 of 12, R. Monziona should be P. Monziona.

On Page 10 of 12, J. Morgan should be T. Morgan

On Page 12 of 12, J. Morgan should be T. Morgan

S. Miller made a motion to approve the minutes of October 16, 2013, as amended. P. Laroche seconded the motion which passed unanimously. (3-0-0)

January 8, 2015 – On page 6 of 7, minutes approved were listed as December 8, 2014; the correct date was December 4, 2014.

S. Miller made a motion to approve the minutes of January 8, 2015, as amended. P. Laroche seconded the motion, which passed unanimously. (3-0-0)

D. Correspondence: Municipal Officials course is being offered; the cost would be covered by the town. The Spring Planning and Zoning Conference is being sponsored by the Office of Energy and Planning – more info to come.

VIII. ADJOURNMENT

S. Miller made a motion to adjourn; the motion was seconded by P. Laroche and passed unanimously. (3-0-0)

The meeting adjourned at 9:05 p.m. The next regular ZBA meeting will be held on March 5, 2015, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session