

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
APPROVED MEETING MINUTES
May 4, 2017**

The following members were present:

Steve Miller, Chairman
Paul LaRochelle, Vice-Chairman
Paul Monzione, Clerk
Lou LaCourse, Member
Tim Morgan, Member

Others present:

John Dever, III, Code Enforcement Official
Jessica A. Call, Planning Secretary

I. CALL TO ORDER

Steve Miller called the meeting to order at 6:03 p.m.

II. APPOINTMENT OF ALTERNATES

III. STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than the 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 would 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 have been or will be met.

IV. APPROVAL OF THE AGENDA

Steve Miller asked John Dever, III, if there were any changes in the agenda; there were none.

**Paul Monzione moved to accept the agenda as submitted.
Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

V. REQUEST FOR REHEARING

Case # Z17-06 Thomas W. Varney, P.E., Agent for James J. & Lisa C. Hayes, Jr.	Map 38 Lot 50	Variance Lakeshore Residential (LR) 23 Richardson Drive
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Present were James J. & Lisa C. Hayes, Jr, Owners.

Steve Miller stated that there was a request for a rehearing on this application. John Dever, III, stated that this request stemmed from the meeting the Board had with Jim Sessler, Esq., Town Counsel, and on behalf of his advice, this rehearing request was made by the Board. Paul Monziona shared with Steve Miller that since it was the Board that initiated the rehearing request, that it was up to the Board to vote on whether the application was to be reheard or not, and it did not typically involve input from the applicants. Tim Morgan confirmed that the application that was to be reheard was the application that was submitted for the April 6, 2017, meeting; John Dever, III, stated yes, that this was the application that the Board denied because they did not feel there was enough of a substantial change from the application submitted to the Board on the March 2, 2017, meeting.

Paul Monziona proposed a correction in the minutes (nunc pro tunc) from the September 1, 2016, meeting. Following the Board's last meeting, the Board had a confidential attorney/client meeting with Jim Sessler, Esq., Town Counsel, and during that meeting, it was noted that the draft minutes from September 1, 2016, had an error. Tim Morgan's comment on Page 2 of 4 should have stated that he "*did not agree*" with Lou LaCourse. Steve Miller stated to Mr. & Mrs. Hayes that the decision would not be affected by this correction. Paul Monziona stated that the correction was important because after the hearing, Tim Morgan actually voted to grant the application and if he had in fact disagreed, then his vote would not have been valid. It also weighed on the Board's determination of whether to have a rehearing of this case.

**Paul Monziona moved to approve the minutes of September 1, 2016, as amended.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).**

**Paul Monziona moved that in accordance with the attorney/client meeting with Jim Sessler, Esq., the Board agreed to rehear the application presented at the last meeting, Case #17-06, at the June 1, 2017, meeting.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).**

Steve Miller scheduled the application to be reheard on June 1, 2017, and the Town will be financially responsible for notifying the abutters.

**Paul Monziona moved to have the expenses for renotifying abutters to be paid by the Town.
Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).**

VI. NEW APPLICATIONS

Case # Z17-07 Matt Silva/Futuro Construction, Agent for Ronald Rubbico	Map 37 Lot 43	Variance Lakeshore Residential (LR) 8 Notla Lane
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Present were Matt Silva, Agent, Ronald Rubbico & Nancy Rubbico, Owners.

Steve Miller asked the Board if they had a chance to look at the application packet to see if it was complete. Tim Morgan noted there was no agency letter, but since the applicant was present, he could make an oral representation. Tim Morgan also stated there was no abutter list in the packet and asked if they were notified; Matt Silva responded yes. John Dever, III, stated that there was a deed in the original application packet along with the abutters list. Tim Morgan asked John Dever, III, if he could state to the Board if he thought the deed was complete; he stated yes. Steve Miller noted that the abutters were notified because there was a copy of the

receipt in the file. Tim Morgan asked John Dever, III, if DOT was an abutter and if they were notified. He stated that they were an abutter, but had not been notified. Steve Miller asked if the file was complete without having DOT properly notified of this meeting. Paul Monzione stated that one of the requirements of the application was to notify all abutters of record, and in this case, since DOT was not properly noticed, and if they had an issue later on, it could become a problem for the applicant; therefore, he did not believe the application was complete due to an incomplete abutters list.

Matt Silva stated that after he submitted the application, he talked to John Dever, III, about an email he received from DOT, which stated that if Mr. & Mrs. Rubbico were not building in the State's right-of-way, they had no objection. He offered to submit the email for the file. Matt Silva stated that Mr. George Gubitose was a representative of the DOT for this district, and it was him that clarified they had no objection. Steve Miller noted that since he had an email from DOT, they must have been notified at some point; Matt Silva stated yes, and Mr. Gubitose passed on this information to two of the engineers that work at DOT. Steve Miller asked Matt Silva to show the email to John Dever, III.

Steve Miller asked Tim Morgan if the email could be substituted for an official notice and be stipulated into the record. Tim Morgan stated that he was uncomfortable with accepting the email and the fact it was a large encroachment into DOT property. Matt Silva stated that in the email, he believed the only objection was that the State's survey did not show where the 25' centerline was, because their survey was done back in 1929, and the road had since changed. Mr. & Mrs. Rubbico hired their surveyor to survey the lot to indicate where it would be.

Steve Miller asked John Dever, III, if DOT stated anywhere in the email that they understood the magnitude of the encroachment. John Dever, III, stated that the email stated the right-of-way distance went from 25' from the center line to 33' at some point in that area, but without knowing the exact location, they believed that the parcel lied somewhere in the area with the 25' distance.

Steve Miller stated there were two attorneys that sat on the Board, Paul Monzione and Tim Morgan, and they both felt uncomfortable that DOT was not properly notified. Steve Miller asked what the rest of the Board felt. Tim Morgan stated that he was concerned about the completeness, as far as the applicant went, because if Mr. & Mrs. Rubbico built the garage and DOT had not been properly asked, the DOT could come along after construction and tell them to demolish it and return the property to its original condition. Matt Silva asked if the request for the Variance, pending DOT approval, could be a condition of approval. Steve Miller stated that it was pertinent to have this case complete, and not potentially compete; Matt Silva understood. Paul Monzione stated that he had concerns about the possible turn around of the State's decision. For example, what if that person left that decided it was ok, then the applicant would be left with an "unofficial" decision. If DOT were notified with the proper notice, then they would have had the opportunity to show up at the hearing to express their concerns.

**Paul Monzione moved to not accept the application due to it not being complete.
Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).**

Matt Silva asked the Board if they could look at the application packet to see if anything else was missing, other than notifying DOT. Paul LaRoche asked if Matt Silva had a plan with elevations; he stated that he did. Paul Monzione noted that the application requested to be way into the setback, and the more information he could provide structurally would allow the Board to make a better decision. Tim Morgan suggested to Matt Silva that he provide a letter of representation; Matt Silva stated that he did provide it with the original packet along with the abutters list.

Tim Morgan moved to table Case #Z17-07 to the June 1, 2017, meeting. Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).

VII. OTHER BUSINESS

1. Previous Business:

Lou LaCourse stated that he would like to open up the Election of Officers again and revote on the position of Clerk. He proposed that in lieu of Paul Monziona being Clerk, he would like to nominate himself.

Lou LaCourse moved to revote on the position of Clerk. Paul Monziona seconded. Motion was PASSED by a vote of (5-0-0).

Paul Monziona moved to nominate Lou LaCourse as Clerk in his place. Paul LaRochelle seconded. Motion was PASSED by a vote of (5-0-0).

2. New Business: none.

3. Approval of Meeting Minutes: April 6, 2017

Steve Miller stated there was an error on Page 2 of 12, second major paragraph up from the bottom, second line, change “accuracy” to “issue.” Tim Morgan thanked Jessica A. Call for doing a good job on the minutes. The Board agreed.

Tim Morgan moved to approve the minutes of April 6, 2017, as amended. Lou LaCourse seconded. Motion was PASSED by a vote of (5-0-0).

VIII. DISCUSSION

Paul Monziona wanted to talk to the Board about having an Alternate as part of the discussion process when determining the outcome of a case. He stated that Frank Rich was an Alternate and participated in the presentation of applications by asking questions, but did not vote, unless he was sworn in on a particular case as a full-voting member. Paul Monziona noted that an Alternate’s opinions were just as important as input from the public. Tim Morgan thought that having an Alternate included in the discussion gives them an opportunity to learn the appeal process. Paul LaRochelle shared that he was previously an Alternate, and going through that process had helped him out significantly in becoming a Member, and now as Vice-Chairman.

John Dever, III, stated that at the attorney/client confidential meeting with Jim Sessler, Esq., a discussion was brought up regarding a 3-2 vote (3 in favor and 2 against). The By-Laws state that it took three (3) members to vote for an application in order for it to be granted. He also stated that he talked to Nic Strong, Town Planner, and she emailed him RSA 674:33, which stated, “The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” John Dever, III, stated that he sent the RSA email to Jim Sessler, Esq., to look at and comment on, and would be meeting with him later on the following week. Tim Morgan asked if the members could receive a copy of that email.

Tim Morgan mentioned that when he attended a seminar, he was told that if there are five (5) members sitting on the Board and different members voted to approve each criteria, that in order for the application to be granted, the same three (3) members who voted to approve all five (5) criteria had to be the same three (3) members to grant the application.

Paul Monziona stated that three (3) members make a quorum, but if there were five (5) members in attendance, according to State Statute, the applicant had to get three (3) votes in their favor to get the application granted, and what Tim Morgan pointed out was that it had to be the same three (3) members on all of the criteria as it was when they voted to grant the application. Steve Miller stated they should get a legal opinion on this issue. John Dever, III, referred to the handbook offered by the NH Office of Energy and Planning as a good reference tool. Steve Miller asked if that was the handbook that was given out to new Board members; he stated yes.

Steve Miller thanked the Board for all of their assistance with tonight's meeting.

IX. ADJOURNMENT

At 6:44 p.m., Paul Monziona moved to adjourn.

Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).

Respectfully submitted,

Jessica A. Call
Planning Secretary

Minutes approved as written: June 1, 2017