

TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
August 7, 2014
Approved as amended September 4, 2014

I. CALL TO ORDER

Paul Monziona called the meeting to order at 7:08 p.m.

II. INTRODUCTION OF CODE ENFORCEMENT OFFICER AND ZONING BOARD MEMBERS

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

John Dever, Code Enforcement Officer
 Tim Morgan, Member
 Lou LaCourse, Member
 Steve Miller, Member
 Paul Larochelle, Member

III. APPOINTMENT OF ALTERNATE

No alternates were present, nor were any needed for this meeting.

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

At the recommendation of J. Dever, the agenda was amended so that the continued case, Z14-10, could be heard first.

S. Miller made a motion to approve the agenda as amended. L. LaCourse seconded the motion which passed unanimously.

VI. CONTINUED – AMENDED APPLICATION

Z14-10	Map 41/Lot 46	Variance
Marie J. Casaccio Rev. Trust		13 Hummingbird Lane
Marie Casaccio, Trustee		

On behalf of Marie J. Casaccio Rev. Trust, Marie Casaccio, Trustee, Thomas W. Varney PE of Varney Engineering is requesting a Variance from Article 300 Section 327 A.2. of the Zoning Ordinance to permit the applicant to add a 14X20' – 28' addition to the back of the cottage that will encroach into the Right of Way setback. This property is located in the Lakeshore Residential Zone.

The case was read into the record by P. Monziona. This application had been accepted as complete at a prior meeting; changes to the application were filed prior to the acceptance, but a continuance was granted in order to give the public time to review the changes. T. Varney, PE of Varney Engineering and Jim Heighton, of Sterling Consulting, presented the case on behalf of the applicant.

J. Heighton explained that the plan shows a 14 foot depth off the rear and 28 feet long against the cottage, with 20 to 22 feet on the back side, depending on the variance granted. The addition has been moved slightly and downsized to accommodate service to the well, and to gain the needed setback from the entire shoreline. The addition will be 10 – 12' from the right of way, 20' from the westerly sideline, 10' from the well, 15' from the easterly sideline, and 30' from any shoreline. All necessary approvals will be amended upon granting of the variance requested. The location of the septic will be 5 feet behind the new addition, 28' from the well (previously it was 25' from the well), 55' from the shoreline (previously 45'). A pump line will be installed and a new leech field will be in place per the septic plan.

T. Morgan questioned the shared well and what the radius should be. J. Heighton explained that the well is shared by six families including the applicant. T. Varney acknowledged that typically the radius of a community well would have to be greater than that of a single household well, but that does not apply in this case because the well serves fewer than 25 people, and it is not registered or recorded with the state. If it were a recorded well with over 25 people, the radius would start at 75' and could go up to 150'. The residents self test for water quality. P. Monziona clarified through questioning that this well is used for potable water.

S. Miller questioned the septic requirements in regard to distance from the lake. T. Varney answered that the septic would need to be at least 50 feet from the lake, and that there is no required distance from the right of way. Mr. Varney also pointed out that if the new septic is approved, it will be located further away from the existing well.

L. LaCourse asked the depth of the well; J. Heighton answered that he is unaware of the exact depth, but that it is a shallow well.

The board members, staff, and the applicant's representatives discussed the choice of 320B 2.a.; discussion concluded that this section was the appropriate choice, as the existing non-conformity will increase as the addition will move slightly more into the right of way setback. S. Miller questioned whether the addition would be within the building envelope as defined by the footprint plus any overhang; T. Varney and J. Heighton were not entirely sure. P. Monziona questioned how much further into the setback the new addition will encroach; J. Heighton answered that at the greatest point, the proposed addition will encroach 2 feet further into the setback on one corner, but it will be conforming to the lakeshore setback.

P. Monziona opened the floor to public input, both in favor of and in opposition to granting the variance. There was no input in favor.

David St. Cyr, secretary/treasurer and member of the Mountain View Cove Association spoke on behalf of the association which abuts the applicant's property. There are six member homes, all of which share the well with Mrs. Casaccio, bringing the total number to seven. He questioned the unregistered status of the well, citing two different legal documents in which the well is mentioned prominently. He also stated that the well is a dug well, and that it is only 8 – 10 feet deep, and it is winterized; two families live at the Association year round.

Mr. St. Cyr read a prepared statement in which he cited Section 320 A.4, expansion of use. Mr. St. Cyr questioned the lot coverage, which will increase from approximately 35% to over 40%. The number of bedrooms was discussed with a conclusion that there are 2 bedrooms. P. Monziona pointed out that 320 A is not appropriate in this case because there will be no expansion of the use; the use will remain a single-family dwelling.

Mr. St. Cyr questioned the affect of the construction on the well, and the encasement of certain waste lines in concrete to meet state requirements and prevent contamination of adjacent water lines, which could affect the

property of two different abutters. He also questioned what the condition of the right of way would be once the construction was completed. The septic tank, according to the original plan, would have to be a hermetically sealed tank. When questioned, Mr. St. Cyr stated that the total number of residents who draw on the shared well is fifteen, including the applicant; 4 of the residents are year-round.

Lola Eanes, an abutter above the beach and to the back side of the applicant's property, spoke about the proposed addition in regard to the various setbacks, and stated that the change to the proposed plan was new to her, as she had not been notified. J. Dever explained that the notification had been made at the last meeting, when the applicant received the continuance.

Mrs. Eanes stated that a second survey had been done, and that the lines were moved due to the second survey, and that the second survey appeared to be more favorable to the applicant. She questioned how the originally proposed addition brought the structure to within 7 feet of the right of way, but the new plan shows a wider addition, and it is 10 feet from the right of way. Mrs. Eanes also questioned the accuracy of the lot coverage as stated on the new plan.

Mrs. Eanes cited several inconsistencies, including the fact that there are no approvals from DES, and that even though the well is not registered, if it needs to be replaced it would still have to fall into the existing guidelines. She also stated that she would like to see elevations and renderings of what the proposed addition would look like, and that she would like to see the corners staked to show exactly where the addition will be. She also mentioned that parts of the right of way are paved in places, and that it is used by cars. Mrs. Eanes showed photos of the existing dwelling and its proximity to the right of way.

Seventeen feet of the proposed structure will be in the right of way setback; the addition will run parallel to the right of way. Mrs. Eanes cited difficulty in getting past Mrs. Casaccio's driveway on the right of way when there are two cars parked there.

According to P. Monziona, the plan being decided on this evening was submitted on July 24, 2014, which is consistent with the deadline for submission. The continuance granted at the last meeting was in order to allow the applicant to provide further input, which would then be available to the public. This plan is binding on the applicant if the application is granted.

There was no further public input.

P. Monziona clarified through questioning that the right of way setback is 25 feet from the edge of the right of way; he asked how close the proposed addition will come to the right of way. He invited the applicant's representatives to respond to the points made during public input.

J. Heighton addressed the second survey, explaining that the first one had been done more as a site plan, and that the second survey had been done to ascertain the deeded location of the right of way, which is not where the current pavement is. He explained that no two surveys are going to be the same; this is due to individual techniques as well as the parameters given to the surveyor. He went on to say that the proposed addition will be 10' and 12' from the right of way, and that the current structure is 12' from the right of way. The 1968 subdivision plan shows the exact location of the right of way.

The community well is located on the Casaccio property; P. Monziona asked about interference or inability to use the well. John from Gilford Well will thoroughly inspect the well structure and test the water before and after the construction; if there is any damage or diminution of water quality, the applicant will repair it. It is his opinion that the well will not be affected by the construction. P. Monziona clarified through questioning that the well could never be located where the proposed addition is going because it is too close to the current structure. The burden of encasing the septic line in concrete would be assumed by the property owner, and the condition of the road would be restored.

No roadway damage is anticipated; the road will be bored rather than trenched in order to install and encase the sewer line in flexible, high density pipe which will shield and protect the water line crossing the road.

Lot coverage could be as much as 40% post-addition. Revised septic and shoreline permits will be applied for and DES will decide if the lot coverage needs to be addressed.

T. Morgan asked about recourse for the users if the shared well were to fail at some time in the future if the failure is due to the construction. J. Heighton reiterated that the well is going to be inspected and monitored before and after the construction, and that it will be repaired if it is damaged during the construction process; the greatest impact will come from installation of the footing. T. Morgan asked if the well could be bonded; J. Heighton did not think it could. Mr. Heighton went on to say that if there is any problem with the well, they will fix it. The well is on the septic plan; DES approved it knowing the location of the well in regard to the septic

L. LaCourse questioned the location of the leech field; it is 250' up the right of way, where it has always been located on the common lot. There is a modern septic tank with a pump and alarm, which is an improvement over what is there now.

J. Heighton spoke about blockage of the right of way – the deeded right of way was restricted to necessary use only, with foot access only to the beach area. He also explained that there are no water quality tests or inspections on file for the well, and that the deeded water supply is supposed to be seasonal.

T. Varney explained the difficulty of the lot – it is about ¼ the size of what would be required today. Additionally, there is a driveway running through it. The existing structure is only 24X32' and can not be added to without difficulty. L. LaCourse pointed out that the existing house offers reasonable use of the lot just as it is.

Citing well documented history with one of the abutters, but also stating that he felt he could still render an impartial opinion, S. Miller recused himself and added that since the abutter had spoken, S. Miller had not given any input nor asked any questions.

Members discussed conditions for the well and the increased non-conformity.

WORKSHEET

P. Larochelle stated that the variance will not be contrary to the public interest; the existing house is 12' from the right of way. There should be a condition stating that the well is to be monitored before, during, and after the construction to insure uninterrupted supply of good quality water. P. Monziona and T. Morgan agreed. L. LaCourse disagreed citing the increased non-conformity and the proximity to the existing well, the shallowness of which increases the likelihood of damage or contamination.

T. Morgan stated that the request is in harmony with the spirit of the zoning ordinance and the intent of the Master Plan, and with the character of the district within which it is proposed. This property is in a community of small lots that pre-dates zoning, and it is in character with the district. P. Monziona agreed mainly due to the focus of the request. P. Larochelle agreed. L. LaCourse disagreed citing the same objections as above.

P. Monziona stated that by granting the variance, substantial justice will be done; this is due to the narrow focus of the request which grants a small corner of the addition encroaching further into the setback that the main structure already does. P. Larochelle and T. Morgan agreed. L. LaCourse disagreed citing increased non-conformity.

L. LaCourse stated that the request will not diminish the value of surrounding properties; no evidence was presented either way. P. Monziona, T. Morgan, and P. Larochelle agreed.

P. Larochelle 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 purpose of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one. T. Morgan agreed; the lot is small and has a roadway running through it, and it pre-dates zoning. Also, the use does not change. P. Monziona agreed and cited the limited size and setbacks bounding this lot. L. LaCourse disagreed, stating that the property is no different in size and structure than many others in the district.

T. Morgan made a motion to approve the Variance for Case Z14-10, with the following conditions:

1 – Department of Environmental Services approval must be obtained for all actions, particularly the septic system, the lot coverage, and the impact on the well.

2 – The applicant assumes all responsibility for the production and/or quality of the well.

P. Larochelle seconded the motion. P. Monziona requested that the motion be amended to include a condition that the driveway must be returned to its pre-construction condition. T. Morgan amended the motion accordingly and P. Larochelle seconded the amended motion which passed with 3 votes in favor and one opposed (L. LaCourse).

S. Miller rejoined the board.

VII. NEW APPLICATIONS

Z14-14 Lawrence and Diane Carr	Map 23/Lot 10	Special Exception 65 Rustic Shores Road
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On behalf of Lawrence and Diane Carr, Thomas W. Varney PE of Varney Engineering LLC is requesting a Special Exception to Article 300, Section 320 B2c to permit a portion of the deck (141 square feet) to be raised in elevation (1.6' +/-) This property is located in the Rural (RU) Zone.

P. Monziona read the case into the record.

After review, T. Morgan made a motion to accept the application as complete; L. LaCourse seconded the motion which passed unanimously.

Tom Varney PE of Varney Engineering and Lawrence Carr came forward to present the application. The request is to raise the cottage to allow a crawl space of approximately 4 feet, and to replace and reinforce the foundation. There will be no expansion. The cottage is currently non-conforming because the setback cuts diagonally across the currently existing 11.5’ deck which will be raised 1.6 feet. The deck is the only non-conforming part of the structure. There is no likely impact on any of the abutters because the upward shift is so slight; abutters were notified, and the proposed change will not affect the view of any of the abutters. L. LaCourse questioned the actual elevations. The cottage will be raised approximately 2.5 feet to allow a 4 foot crawl space under the cottage; the peak will still be under the 35 foot height restriction.

P. Monziona opened the floor to public input; there was none.

T. Varney worked through the Variance worksheet, explaining that the proposal conforms to each of the criteria, and that there were no objections from the abutters. Following Mr. Varney’s comments, there was still no input from the public.

WORKSHEET

P. Monziona stated that a plat has been accepted in accordance with the Town of Alton Zoning Ordinance 520B. All members agreed.

L. LaCourse stated that the specific site is appropriate for the planned use; the use is not changing. All members agreed.

S. Miller stated that factual evidence is not found that property values in the area will be reduced due to incompatible uses. There has been no testimony or evidence presented to the contrary. All members agreed.

P. Larochele stated that there are no valid objections from abutters, based on demonstrable fact; all members agreed.

T. Morgan stated that there is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways or off street parking; none of that is changing. All members agreed.

P. Monziona stated that adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure. There is no change to the number of bedrooms, but it was represented that an approved septic design will be obtained. All members agreed.

L. LaCourse stated that there is adequate area for safe and sanitary sewage disposal and water supply does not apply as this is already pre-existing and there is no change to the building. All members agreed.

S Miller stated that the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan; the use and the footprint are staying the same. All members agreed.

L. LaCourse made a motion to approve the Special Exception in Case Z14-14, but the approval should reflect a rise of 2.5 feet, not 1.6 feet. S. Miller seconded the motion which was approved unanimously.

Z14-15 Deirdre A. Tibbetts Brian A. Fortier Allyson R. Fortier Shea	Map 17/Lot 11	Variance 1399 Mount Major Highway
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On behalf of Deirdre A. Tibbetts, Brian A. Fortier, and Allyson R. Fortier Shea, Brian A. Fortier, part owner is requesting a Variance to Article 400, Section 401 to permit an accessory, year-round, winterized apartment for marina security accommodations. This property is located in the Recreational Service (RS) Zone.

The case was read into the record by P. Monziona. Case Z14-16 was also read in, much of the information presented will be relevant to both cases, though they will be deliberated and decided separately.

After Board review, P. Larochele made a motion to accept the application for Case Z14-15 as complete. L. LaCourse seconded the motion which passed unanimously.

Brian Fortier came forward to present; with him were Sheldon Pennoyer of Sheldon Pennoyer Architects, Robert J. Dietel of Gallagher, Callahan and Gatrell, P.C., and Gary Spaulding, Engineer. This application is for continuing expansion of the West Alton Marina property; between Route 11 and Lake Winnepesaukee, there are 11 lots comprising 153 acres. The area where the gatehouse and the boat storage facility (Case Z14-16) will be located is a natural basin. Using aerial photography and architectural renderings, Mr. Fortier showed that the abutters are all at a higher elevation which will allow for them to continue having an unimpeded view; in fact, the nearest abutter has submitted an email stating his support for these projects.

The marina has 147 slips and storage for 90 boats; on site security will provide a higher level of security and safety to the boats and the customers. The gatehouse will have office and restrooms on the first floor and a one bedroom apartment on the second floor. The location of the gatehouse will be on the access from Route 11, where the road and the brook meet. P. Monziona clarified through questioning that residential units are not allowed in the Recreational Service Zone; that is why the variance is needed. The office space on the first floor is allowed in connection with the operation of the marina, and the residence will be solely for the use of marina security.

The boat storage facility will be 56' high which will accommodate the larger boats that the slips have been expanded to hold. These boats are taller, wider, and heavier than previous generations. The existing buildings can not accommodate the newer boats. Mr. Fortier showed photos of the newer boats which often include radar arches, fly bridges, or hard tops for fishing boats. The new building will accommodate three levels of boats, as the current buildings do. Mr. Fortier again used aerial photos to indicate the location of the proposed boat storage facility; he flew a flag above the area at a height of 56 feet, then took photos from different locations and from abutters' properties to show that the proposed height will not impair any view, as the proposed location is lower in elevation than most of the surrounding abutters. In fact, Mr. Pennoyer stated that the 56' height allows for a smaller footprint. This building will not be visible from Route 11. Mr. Fortier stated that this building will also have a boat wash, which is not currently available. The building will be completely enclosed; Mr. Fortier used an architectural rendering to explain the features of the building. J. Dever made the point that he has seen the rendering and it is his opinion that the three story, higher building is actually a better fit with surrounding buildings than a lower, two story building would be. There were no objections from the fire inspector to either application.

Mr. Dietel went through the five points of the variance requirements, stating that the application for the security gatehouse meets all guidelines. S. Miller commended the applicant on his preparation and presentation.

The floor was opened to public input; there was no public input. Public input was closed.

P. Monziona added his commendation to the applicant for the clarity of his visuals and thoroughness of his presentation.

WORKSHEET (Case Z14-15)

S. Miller stated that the variance will not be contrary to the public interest. This is a recreation zone and this will enhance the recreation business and will enhance the safety and security of the business and its customers. All members agreed.

P. Larochelle 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. This will be a major improvement for public use and will be a good thing for the area. All members agreed.

T. Morgan stated that by granting the variance, substantial justice will be done. The value to the applicant far outweighs any detriment to the neighborhood. All members agreed.

P. Monziona stated that the request will not diminish the value of surrounding properties and added that this structure will not have any detrimental affect on the area, and there was no evidence presented to the contrary. All members agreed.

L. LaCourse 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 purpose of the ordinance provision and the specific application of that provision to the property; the proposed use is a reasonable one. This use is very reasonable and is, in fact, needed. "The fact of where it is, that the property is so well insulated because of the size of the property and the layout of the land it really provided the impetus, in my mind, for the unnecessary hardship if it is not granted." Also, added security is always welcome. All members agreed.

S. Miller made a motion to approve the application for Case Z14-15 with no conditions. T. Morgan requested amendment to add a condition that would require compliance with the NFPA guidelines as requested by the Deputy Fire Inspector. S. Miller accepted that amendment to the motion. L. LaCourse seconded the amended motion which passed unanimously.

Z14-16	Map 17/Lot 29	Variance
West Alton Marina LLC		35 West Alton Marina Road

On behalf of West Alton Marina LLC, Brian A. Fortier, Manager is requesting a Variance to Article 300, Section 328B to permit a boat storage building of 56 feet in height, whereas the ordinance limits vertical distance to 35 feet. This property is located in the Recreational Service (RS) Zone.

Attorney Dietel stated that the comments made and evidence submitted with the prior application should be incorporated into this application. He also went through the five points of the variance requirements, defining how each of the five criteria have been or will be met.

At this time, the application was reviewed for completeness, as it had not been done prior to the presentation.

S. Miller made a motion to accept the application as complete; motion was seconded by L. LaCourse and approved unanimously.

There was no public input for this case; public input was closed.

WORKSHEET (Case Z14-16)

P. Monziona stated that the variance will not be contrary to the public interest. The height restriction deals mostly with public safety and the ability of the fire department to respond, and to ascertain that there will not be a block to any view. The fire inspector did not have any concerns with regard to this property, and the applicant proved that there would be no visual impact. Additionally, this structure will allow for a small, more environmentally friendly footprint. All members agreed.

L. LaCourse 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 in which it is proposed. The location really makes a difference; this will be visually insulated, and the fire inspector is comfortable with it. All members agreed.

S. Miller stated that by granting the variance substantial justice will be done. Given the greater height of today's boats, this will allow the marina to provide full service, which is in keeping with the spirit of the ordinance. All members agreed.

P. Larochelle stated that the request will not diminish the value of surrounding properties. No information was presented to indicate that there would be any decrease, and in fact, he believes surrounding values could go up. All members agreed.

T. Morgan 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 purpose of the ordinance provision and the specific application of that provision to the property; the proposed use is a reasonable one. . The reasons for the height ordinance have been addressed by the lack of FD concerns, and the depiction of the lack of visual impact. The proposed use will stay the same. All members agreed.

S. Miller made a motion to approve Case Z 14-16 as presented. P. Larochelle seconded the motion. P. Monziona requested that the motion be amended to add a condition stating that the applicant would comply fully with the concerns of the Alton Fire Department as detailed in the department comments provided. S. Miller agreed to the amendment and P. Larochelle seconded the amended motion which passed unanimously.

VIII. OTHER BUSINESS

A. Previous Business: None

B. New Business: None

C. Minutes: July 10, 2014 is listed as present. In fact, T. Kinnon was not present, but Tim Morgan, Member, was present.

On page 1, Tim Kinnon, Alternate

On page 2, the motion granted allowing a continuance for the applicant in Case Z14-10, should have been noted as a continuance not counted against the applicant, as that is the way the motion was made.

On Page 3, L. LaCourse seconded the motion to accept the application as complete.

On page 3, third paragraph, T. Morgan asked about a DOT driveway permit, and the sentence reading "It is being worked on now" should include "...by the State Highway Department."

On page 4, P. Monziona did not make a motion to amend S. Miller's motion; he requested that S. Miller amend his motion to include conditions. S. Miller agreed to amend the motion.

On page 4, at the very bottom, the last sentence should continue, "R. Nadeau stated for the record that it is their position in the ordinance does not have any setback **for the Right of Way.**"

On Page 5, the first line refers to Attorney Hoover as an abutter; he was, in fact, representing abutter Avril Babson.

Also on page 5, amendments to the motion by L. LaCourse were requested by S. Miller and P. Monziona.

On page 6, P. Monziona requested an amendment to the motion by S. Miller.

S. Miller made a motion to approve the minutes as amended; L. LaCourse seconded the motion which passed unanimously.

D. Correspondence: None

IX. ADJOURNMENT

L. LaCourse made a motion to adjourn; the motion was seconded by T. Morgan and passed unanimously.

The meeting adjourned at 10:04 p.m.

The next regular ZBA meeting will be held on September 4, 2014, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session