

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
September 4, 2014
Approved October 2, 2014 as Amended**

Prior to the official call to order, Chairman Paul Monzione explained to those present that, in the event only three members were present, applicants would be given the option to request continuance to a future meeting without penalty to their three continuances allowed by ZBA regulations. Having three members still constitutes a quorum for the Board, but it would require that all three members be unanimously in favor of each criterion on the worksheet for Special Exception or Variance. In the event four members are present, applicants would still have the option of requesting continuance, but that continuance would count as one of the three permitted before the application needs to be started over.

Chairman Monzione also explained that the Board does not begin new cases after 10:00 p.m. Any cases begun prior to 10:00 p.m. would be heard and adjudicated; any cases on the agenda not begun prior to 10:00 p.m. would be continued to the next meeting without penalty to the three continuances allowed.

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:15 p.m., after the arrival of Member Steve Miller.

II. INTRODUCTION OF CODE ENFORCEMENT OFFICER AND ZONING BOARD MEMBERS

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

John Dever, Code Enforcement Officer
Tim Morgan, Member
Steve Miller, Member
Paul Larochele, Member

III. APPOINTMENT OF ALTERNATE

As Alternate Tim Kinnon has moved from the Town of Alton, there is no longer an alternate to the ZBA. There is a quorum present for this meeting, so one is not needed this evening.

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

T. Morgan made a motion to approve the agenda as presented. P. Larochele seconded the motion which passed unanimously.

VI. NEW APPLICATIONS

Z14-17 Alton Bay Camp Meeting Assoc. (Land Owner) Jonathan N. Brown Family Trust (Building Owner)	Map 34/Lot 33	Special Exception 12 Winni Avenue
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On behalf of Jonathan N. Brown, Trustee, Steve Holmes is requesting a Special Exception to Article 300, Section 320.A.4 to permit expansion of a non-conforming use. This property is located in the Residential Zone.

The case was read into the record by P. Monziona.

The application was reviewed for completeness. T. Morgan questioned the Staff Review – this case is designated as a variance, rather than a special exception. J. Dever explained that the Staff Review is in error; the case is definitely a special exception as indicated on the agenda and by the application itself. P. Monziona asked about Agency for the building; Steven Holmes is acting as agent for the land owner. The applicant agreed to verbally name Steve Holmes as his agent as well. P. Monziona also questioned the fact that the application is from the building owner, not the land owner, as would be customary. J. Dever pointed out that the Alton Bay Christian Conference Center is unique and that this application is acceptable as it is. S. Miller asked if there is any evidence that the Alton Bay Christian Conference Center is in favor of this application; there is a letter in the application showing their support.

T. Morgan made a motion to accept the application for Case Z14-17 as complete; P. Larochele seconded the motion which passed unanimously.

Jonathan Brown, applicant, named Steve Holmes as his representative.

The existing building is difficult and costly to repair; they wish to raze the building and replace it with a building that is up to code. The new building would be 9.2 square feet larger, but that space is currently taken by a deck that juts into the building. The second floor would match the existing first floor footprint.

P. Monziona commented on the photos included with the application and questioned the need for replacing the building, as it does not appear to be in bad shape. Steve Holmes explained that there have been multiple additions to the original structure. The current building is a hodge-podge and there is no way to put a foundation under the whole thing. He described the interior as a “fun house,” with narrow stairs and low doorways. Additionally, there is a huge stump under the building that is deteriorating. The living room floor slopes 5” from corner to corner, and the door leading into the bathroom is only 20” X 70”. Currently, the homeowner and his wife do not use the second floor. Everything has been built square to the existing frame, so trying to square the frame would make

everything in the house off. The homeowner expressed concern about the structural integrity of the existing building.

S, Miller pointed out that the existing structure will be relocated 4' to the east. He asked if there are any utilities or fuel tanks located in that area; there are not. The building will still be 56' from the property line. That area of the property is not used for parking or anything else. Mr. Holmes used a diagram to show the area of the relocation and to show where the 9.6 additional square feet will be located. The footprint of the building will not change substantially.

P. Monziona stated that the building will be better, safer, sounder, and more aesthetically pleasing. He asked the applicant if he had seen the concerns of the Fire Department from the staff reviews. Deputy Chief/Fire Inspector Richard Brown noted the following recommendations: 1 fire extinguisher 2-ABC or greater on each level; no outside storage of flammables under exterior stairwells used as exits; if propane heat is to be used, a propane leak detector should be installed on each level; smoke detectors are to be hard wired. Mr. Brown had no concerns about those requirements and added that they intend to put in heat pumps, so there will be no propane at all.

S. Miller asked about increase in the number of bedrooms or additional requirements to the septic system; there will not be. S. Miller went on to say that it appears the intent here is to take an out-of-code property and bring it entirely into code. The homeowner agreed and added that his intent is to keep the structure looking the same, but to have it new.

P. Monziona questioned the application under Section 320.A.4, which goes to non-conforming use. J. Dever explained that because the home is located on the Christian Conference Center in the residential zone, and the residential zone allows only one dwelling on a lot, even though the structure is conforming, the location makes it a non-conforming use.

The floor was opened to Public Input. There was none so Public Input was closed. The applicant was given an opportunity to add further information if needed; he declined.

WORKSHEET

S. Miller stated that a plat has been accepted in accordance with the Town of Alton Zoning Ordinance 520B.

All members agreed.

P. Larochelle stated that the specific site is appropriate for the planned use; the use is not changing.

All members agreed.

T. Morgan 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 regarding values but it is likely that values could improve. All members agreed.

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

S. Miller 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, and the plan has been approved by the Alton Bay Camp Meeting Association. All members agreed.

P. Larochele stated that adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure; the residential use is not changing and there will be no affect on the utilities or facilities. All members agreed.

T. Morgan stated that there is adequate area for safe and sanitary sewage disposal and water supply; there have been recent upgrades to those systems made by the Association. All members agreed.

P. Monziona stated that the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan; this is consistent with the rural character of the surrounding cottages and given the improvements to be made, it is in character with the ordinance. All members agreed.

S. Miller made a motion to approve the Special Exception for Case Z14-17 as requested. T. Morgan requested that he amend the motion to include a condition that the applicant must follow the recommendations of the Fire Inspector. S. Miller accepted the amendment; P. Larochele seconded the motion as amended. The motion passed unanimously.

Z14-18 Robert and Dianne Wyszynski	Map 70/Lot 5	Equitable Waiver of Dimensional Requirements 83 Sunset Shore Drive
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Robert and Joanne Wyszynski are requesting an Equitable Waiver of Dimensional Requirements to Article 500, Section 540 to permit a primary residence, generator and holding tank vent to remain in their present location. This property is located in the Rural Zone.

P. Monziona read the case into the record.

The application was reviewed for completeness.

T. Morgan made a motion to accept the application for Case Z14-18 as complete. S. Miller seconded the motion which passed unanimously.

Joanne Wyszynski came forward to present. She is requesting a waiver of the setback. The cottage was purchased in 1985; at that time a hemlock hedge was represented by both the seller and the neighbors as the boundary line. In 2000, the cabin was converted to a year round home. The contractor who did the conversion obtained all the necessary permits and inspections; he was cautious because there was only a 10' setback to either of the side boundaries. The building inspector at that time viewed the site; every attempt was made to put the house in the right place. When the neighbor decided to rebuild her home, a discrepancy was noted in the lot line between the two houses; the hedge turned out to not be the actual property line. Mrs. Wyszynski is requesting a waiver so they can leave their home, their generator (also inspected by the town and hidden in the hemlock hedge) and their septic holding tank vent exactly where they are.

T. Morgan asked the applicant if she has seen the concerns of the Fire Inspector; she has not. A copy of the comments was provided to the applicant for review.

S. Miller noted a letter received from Hall, Morse, and Anderson on September 3, 2014, which he has not had a chance to review. He requested a short recess to review this letter from an attorney representing the neighbor; the applicant asked for a copy of the letter, as she was unaware of it. The letter is signed by Attorney Frank Spinella. P. Monziona granted S. Miller's request for a recess.

After reviewing the above-mentioned letter, T. Morgan commented that the applicant may wish to seek a continuance so she can gather her resources to process both the comments of the Department Head

and the legal opinion of her neighbors' attorney. S. Miller supported the idea of a continuance as well. P. Monziona explained that because the applicant is requesting relief from Section 540, all of the conditions of that section need to be met in order for the ZBA to grant the request. The applicant stated that she has tried to make this right, but it appears that the neighbor has added more issues to this than the three things she originally thought she was dealing with.

Mrs. Wyszynski requested a continuance to the meeting on November 6, 2014; she felt she would need at least that amount of time to hire her own experts and allow them to do due diligence. S. Miller questioned whether this continuance would count as one of the three allowed by regulations; P. Monziona answered that it would.

T. Morgan made a motion to grant the request by the applicant in Case Z14-18 to continue the case to the meeting on November 6, 2014. P. Larochelle seconded the motion which passed unanimously.

Z14-19	Map 62/Lot 14	Variance
James V. and Kristine A. Lemmis		12 Mill Cove Road

On behalf of James V. and Kristine A. Lemmis, White Mountain Survey and Engineering, Inc. is requesting a Variance to Article 300, Section 327.A.1 to permit the land owner to voluntarily raze the existing home and then reconstruct a completely new home in the same general footprint shape with a reduced footprint within the 30' waterfront setback and be set back two additional feet. This property is located in the Lakeshore Residential Zone.

The case was read into the record by P. Monziona.

The application was reviewed for completeness.

S. Miller made a motion to accept the application for Case Z14-19 as complete. P. Larochelle seconded the motion which passed unanimously.

Jim Rines from White Mountain Survey and Engineering came forward with the applicant to present the application. This application was originally filed under Article 300, Section 320.B.5; after more review Ken McWilliams suggested the change to Section 327.A.1.

The plan as shown is 1" equals 10', not the typical 1" equals 20'. The lot is 8,712 square feet, or .2 acres. There is 161' of lake frontage which includes an enormous boulder, and 50' of road frontage on Mill Cove Road. The plan is to construct a new structure that would be two feet further back from the shoreline, going from 3.6 feet to 5.6 feet. This is a challenging lot – it is very small, steep, and boulder-strewn. To build a conforming home would require a significant change in the feel of the neighborhood and would require removal of a lot of vegetation.

The stairway on the westerly side of the building will be removed, and the new structure will be located 2 feet further back from the lakeshore. There will be a modest increase of 28 square feet in the living area to accommodate a slightly larger kitchen, but there will be no increase in the number of bedrooms. These changes will result in 31 square feet less building space inside the setback. The site of the relocated building is what Mr. Rines and the applicant feel to be the most practical and reasonable location, given the constraints of the lot and without redeveloping the whole lot. Granting the variance will allow the applicant to maximize retention of the existing vegetation by building within the same area as the existing home. There will be minimal loss of vegetation in order to demolish the existing structure and to construct a new building.

P. Monziona questioned the choice of the Article/Section chosen. 320.B was not used because the new structure is not in-kind; it is slightly larger and moved further back on the lot. P. Monziona stated that moving back on the lot is encouraged by 320.B, but the increase in size by 28 feet would keep 320.B from being an option. This was discussed at some length by P. Monziona and the applicant. P. Monziona explained that what is being requested is essentially a request to build a new structure on a vacant lot only 5 feet from the shore; once the existing structure is razed, it becomes a vacant lot. Mr. Rines explained that the 28 square foot addition will be entirely compliant with the setbacks. The alternative is to remove the existing structure and relocate the new structure in compliance with lake shore setback, which would require stripping a wooded lot and excavating a steeply sloping lot covered with boulders and trees.

Mr. Rines had referenced a publication in his application, "The Board of Adjustment New Hampshire Handbook," which is available from the office of State Planning and is designed to give guidance to local Zoning Boards. P. Monziona voiced his appreciation for that inclusion, as many of the points made were very relevant and helpful.

S. Miller asked about the height restriction; Mr. Rines explained that there is no request for variance of the height restriction as the building will not exceed the 35' limit. S. Miller asked about the cost of constructing the proposed structure based on building in compliance to all of the zoning regulations. Mr. Rines explained that they had not done a cost analysis based on those restrictions. S. Miller asked Mr. Rines to explain the hardship. Mr. Rines explained that the general public purpose of the ordinance is to prevent overcrowding of the lake shore; this property was built in the 1970's, prior to the adoption of regulations existing today. The original home was constructed with a deck only 3.6 feet from the shore line. The unique condition is that the home was originally located prior to zoning regulations, and the slope of the land distinguish this lot from others. When specific ordinance conditions are strictly applied, the homeowner is prohibited from making even modest changes to his home which will also make it more compliant with the setback provisions. They also intend to install stormwater mitigation in compliance with Article 600, Section 601 of the Shoreline Protection Overlay District. For those reasons, there is no fair and substantial relationship between the general public purpose of the ordinance and the provisions for the specific application of this property.

S. Miller asked why moving the structure back to be in compliance with the shore line setback is a significant hardship over keeping it only 5.6 feet from the shore line. Mr. Rines explained that the hardship is in the land, and not to the homeowner. To move the structure back will remove much vegetation which will affect water quality and runs contrary to the zoning ordinance. Occupying essentially the existing building envelope, with an additional 28 square feet currently unvegated, will go toward maintaining water quality. S. Miller asked how many trees would have to be removed to adhere to the zoning restrictions; Mr. Rines could not give an estimate, but referred the Board to the photos showing mature trees of 8 – 12 inches covering the property. Other than the trees that would need to be torn down in the process of demolition/rebuilding, the proposed location is least impacting on the environment and more in keeping with the spirit of the ordinance. There was discussion of the number of trees that would have to be removed in order to access the building site.

P. Monziona again questioned the need for the 28 square foot addition; without that, there would be no need for this variance as what they are requesting is permitted under Special Exception. On one hand, locating where they are in kind would give up the additional space, but there would certainly be a greater financial burden to have to relocate the building entirely out of the setback, in addition to removing all of the trees. The proposed location is going to improve the site by getting the structure a little more out of the setback, and the stormwater modifications will improve things in the area and for

the lake. This improvement would be lost if the homeowner decided not to do anything because of cost prohibition. The applicant conveyed that it would be cost prohibitive to relocate the dwelling in compliance with the setbacks.

J. Dever explained that his interpretation of the variance requested is for the area of encroachment; the 28 square feet is in the building envelope. If he wanted to put an addition on the building as it is right now he could do that without ZBA involvement. Section 320.B.2.(b) shows the figure where you can take space within the building envelope and build in it. The request for the variance is because there will still be a part of the structure into the setback, and they are reducing the impact to the shore line. If they wanted to remodel, they could request a special exception to go up or down, but then they would have to repair the existing structure which may not be possible for this building. The impact is already present; the idea is to reduce the encroachment while minimizing the physical impact.

J. Dever asked for the slope percentage of the lot; it is 44%. They are looking to remain in the setback but reduce the encroachment; if they simply wanted to add on to the existing cottage, all they would need to do is have DES approval for Shore land and septic. P. Monziona agreed but again added that once the building is removed there is no building envelope, so it is essentially a vacant lot.

P. Monziona opened the floor to public input. Sharon Hilson came forward representing KJB Realty Trust, an abutter property. She would not be in favor of removing the trees to relocate the cottage; that would change the character of the area entirely. She asked about the demolition of the existing home and is concerned about blasting. She knows the applicant will take care of everything and they will do a good job. The abutter house is for sale, but she is comfortable with the timeline and the fact that the applicant will take care of hauling away debris quickly. She is in favor of granting the application. When questioned by S. Miller as to the location of her home, she used one of the applicant photos to indicate the location. P. Larochelle explained that when there is blasting, the contractor has to check foundations and well/water quality before and after blasting occurs – this is industry standard.

There was no further public input either for or against the application being granted. Public input was closed.

P. Monziona asked about the foundation; it is going to be a poured foundation. The current foundation is cinder block but it is failing on the lake side, which is causing the front of the cottage to sag. Mr. Rines recapped and added that by removing the outside staircase and moving the cottage back, they are reducing the non-conformity by 31 square feet; that is an improvement along with the stormwater management they will be able to do.

P. Monziona again stated that this will be essentially a vacant lot once the house is razed. The alternatives were to fix the existing and add the 28 square feet, which requires nothing, or to raze the existing and build in kind which is allowed by special exception. The addition of the 28 square feet is what turns it out to be a vacant lot. However, according to the “Handbook” referenced previously, the addition of the 28 square feet does not adversely affect the character of the neighborhood or threaten the health, safety and welfare of the public. His approach to this is going to be to treat this as a vacant lot.

T. Morgan spoke to J. Dever’s point – what they are really talking about is that the variance only applies to something that is going to be in the setback, and the 28 feet could be put on anyway. He does not think it is as black and white as having a new lot; there is some equity.

WORKSHEET

P. Monziona stated that the variance will not be contrary to the public interest. The public interest is going to be served by the variance because the structure will be moved further out of the lake setback, and the construction will address stormwater issues and improve the lot environmentally and otherwise. S. Miller disagreed and stated that the ZBA has a charge to make homes throughout Alton as conforming as possible; where there exists an opportunity to make a house more conforming or entirely conforming, that is the charge of the Zoning Board. P. Larochelle agreed with P. Monziona; the applicant is going to have to deal with DES on shore line protection. T. Morgan agreed citing recent changes to the zoning regulations that address bringing properties closer into conformity and moving them back away from the lake.

P. Monziona offered S. Miller an opportunity to make comment back in deliberation. S. Miller feels that the hardship criterion is critical because it is based on everything preceding it. The ZBA is not an enforcement division but there have been specific rules made for a purpose, and one of the more important zoning restrictions is the amount of space required between the building and the shore. If something is existing and only three feet away, he understands that. Just moving the building back to 5 feet has not been defended as any more than an aesthetic reason rather than a critical reason for where the building should be, and the location of the building trumps the cutting of trees. The greatest resource to protect is the lake. There are significant alternatives to what can be done if the variance is not granted – the house can be remodeled, it can be moved back. There are alternatives to leaving it just 5 feet from the shore, and that small area is just too critical.

Return to Worksheet

S. Miller stated that the request is not 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 shoreline restriction trumps the cutting of whatever number of trees it would take to move the house, as long as it was going to be razed anyway, there are other alternatives to keep within the Master Plan. P. Larochelle disagreed stating that it is in harmony. They have to go through state regulations for the shore land protection, and there will be more of an impact by removing trees and doing more disruptive damage to the shoreline by moving it back 30 feet. It has been at the present location for many years, and moving it back a few more feet is trying to get it more compliant and it is in harmony with the Master Plan. T. Morgan agreed that it is in harmony; the ordinance wants things move back from the shore, and the Master Plan wants to preserve the character of the neighborhood, which is addressed by what they are trying to do. He would be very concerned about moving it back and putting it on a 44% slope and ripping out the vegetation which would cause pollution to the lake well in excess of the value of moving it away from the lake. P. Monziona agreed with P. Larochelle and T. Morgan for the reasons they stated and also because strict compliance would alter the character of the neighborhood. The homeowner could leave the home as it is and not address the stormwater issues. The house is being moved back, though not a lot, and the 28 square feet is not a great impact. The homeowner could also tear down all the trees to locate the building, but the least impact is doing as the applicant has requested.

P. Larochelle stated that by granting the variance, substantial justice will be done. In reference to the mentioned "Handbook," he believes this is going to be substantial justice. T. Morgan agreed; the benefit to the applicant far outweighs any detriment to the community of Alton. P. Monziona agreed because there is a gain to the general public in the management of the stormwater as well as moving a structure further out of the setback. S. Miller disagreed; the gain to the individual is much greater than the loss of the general public interest, which is the loss to the shore line.

T. Morgan stated that the request will not diminish the value of surrounding properties; an improvement would have a positive impact. Additionally, there was input from a member of the real estate community who was in support of this construction. P. Monziona agreed that the proposed building will improve the value of that property as well as surrounding properties. S. Miller agreed adding the building will be more in compliance with the ordinance and more in compliance with code as well, and added that this structure will not have any detrimental affect on the area, and there was no evidence presented to the contrary. P. Larochelle 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. He stated that the proposed use is a reasonable one because the use is not changing. The fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and regarding S. Miller's interpretation, which is strictly correct, applying that regulation to the plan would cause the structure to not be moved further out of the setback, and would lose the stormwater management improvements, which are going to be an improvement far above the adverse impact, if any, of the additional 28 square feet of building. S. Miller disagreed; the hardship criterion has not been met by the evidence submitted. His inquiry as to significant economic harm to relocate the structure back was not calculated, which means there was no thought given to that as an alternative. This is not the only solution – it could be remodeled or moved back more than is being done. Also, the movement to a steeper grade is not unusual; there are many homes in that area with that grade issue that is fully compliant. P. Larochelle agreed with P. Monziona that the proposed use is a reasonable one, for the reasons given. T. Morgan agreed with P. Monziona – the public purposes of the ordinance are to protect the lake and the water quality and character. Requiring this property to be relocated up the hill away from the lake to be compliant with the setbacks would be detrimental to the lake and the water quality, and to the runoff of sediment into the lake. There is no fair and substantial relationship between the public purposes and this specific application. It does meet the hardship criteria and the proposed use is a reasonable one.

T. Morgan made a motion to approve application Z14-19 for variance with the conditions that all DES requirements be filed for and met, and also that the Department Head comments from the Fire inspector be adhered to in the construction of the home. P. Larochelle seconded the motion which passed with three votes in favor and one opposed (S. Miller).

VII. OTHER BUSINESS

A. Previous Business: None

B. New Business: Members discussed possible means to identify a new alternate for the ZBA, now that Tim Kinnon is no longer eligible.

P. Monziona made a motion to run notices in the Baysider and the Laconia Sun seeking applicants for alternate member(s); P. Larochelle seconded the motion which passed unanimously.

Additional suggestions were made, including announcement at the Selectmen's meeting, and having a notice posted at the Post Office.

C. Minutes: August 7, 2014 – On page 4, last line of the next to last paragraph, L. Larochelle should be P. Larochelle. On page 7, next to last line of the next to last paragraph, wording was questioned and tape was reviewed. Exactly transcribed, the line in question should have read, "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."

D. Correspondence: None

VIII. ADJOURNMENT

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

The meeting adjourned at 9:25 p.m.

The next regular ZBA meeting will be held on October 2, 2014, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session