

**TOWN OF ALTON**  
**ZONING BOARD OF ADJUSTMENT**  
**Approved 11/5/09**  
**Public Meeting**  
**October 1, 2009**

**I. CALL TO ORDER**

The meeting was called to order at 6:30 p.m. by Paul Monziona, Chair.

No representative from the Board of Selectmen

**II. APPROVAL OF MINUTES**

April 2, 2009 minutes

On Page 1, heading should read Map 62, Lot 3, not May 62, Lot 3

Also on Page 1, should be Christine, not Christing

On Page 2, “e” is missing from the end of Monziona

Also on Page 2, Paragraph 1, 4<sup>th</sup> line it says to “fill in behind the existing structure with about 72 square feet. There was discussion as to what this sentence was actually about. S. Penney went to get the file on this case, as there is confusion as to what the 72 feet is actually referring to.

Page 3 under the bold motion in #2 “beefier” should be “buffer”

Also Page 3, same motion under #3 “naximum” should be “maximum” and “fee” should be “feet”

Page 4 was discussed and for future reference waivers need to be more specific and include the specific waivers. In this particular instance, there is agreement that the reference to the waivers are those that were in the application and discussed above.

Page 5, near the bottom, above #4 should read “P. Monziona felt that the zoning allowed a similar use of public recreation and felt the request was not going far afield from this.”

S. Penney returned with files in order to try to get clarification on the 72 feet discussed above. Approximately half of the original house was within the 50 foot setback to begin with, and then they did a huge expansion that extended it back to 78 feet. P. Monziona speculated as to whether this meant that 72 square feet of the structure ended up in the setback; that they were expanding the structure about 72 square feet, and that the DES has seen the 72 feet in the setback and received approval.

S. Penney recalled that this was a case where the applicant was doing apples and they were doing oranges with the math, as far as building envelopes, and in was very convoluted. It’s a 61 foot ballpark expansion.

P. Monziona suggested that they might want to approve the minutes conditionally on clarification of the 72 square foot reference, which could be done between now and the next meeting. At the next meeting the clarification information can be brought in and the approval

can be adjusted accordingly. S. Penney pointed out the slope in the back down to the water and that is where they are putting the proposed new septic tank, so perhaps that is where the word “fill” came from. She remembers that there were elevation issues.

S. Ames suggested that if they want to approve them contingent, she can look into the tape and then just fix it; that way it will be done. P. Monziona agreed, stating that a motion would be conditionally made for that purpose.

Page 2, applicant’s name is John Otte

Also on Page 2, 4 paragraphs down, where it states there were no comments from the public, there was a note from the conservation committee regarding non-conforming, “structures” should be added.

Page 5, #4, should be request “will not” rather than “will/will not”

Page 6 statement by P. Monziona should say “P. Monziona felt that this was not much different being a non-public educational use entailing water studies from the public use of recreation allowed within the zoning.”

Also on Page 6, #6 under motion, should be “by” not “b”

Still on Page 6, under #2 should read “no parking occurs within the town’s right of way” instead of “all no parking...”

**T. Morgan made a motion to approve the minutes of April 2 with the changes noted by members of the Board and the Planning Board staff, also subject to changes to be made to the paragraph under Case Z09-05 for clarification to the paragraph referencing 72 square feet on page two of the minutes. S. Hurst seconded the motion, which passed by unanimous vote.**

July 23, 2009 minutes

Under Introduction of Board Members, Stephen Hurst should be noted as Vice-Chair, not Member.

Board would like to begin noting in this same section whether there is representation from the Select Board; Selectmen’s representative was not present at this meeting.

Page 4, a couple of paragraphs up, should be S. Hurst, not P. Hurst

**T. Morgan made a motion to approve the minutes of July 23, 2009 as corrected at this meeting and as amended. S. Hurst seconded the motion, which passed unanimously.**

September 3, 2009 minutes will be addressed later in the meeting, time permitting.

P. Monziona stated that the Board had been in session since 6:30 for the purpose of correcting and approving minutes. At this time, 7:00 p.m., the Board will move to the regularly scheduled agenda for this evening.

Before getting into the agenda, P. Monzione stated, as a point of order, that one of the regular members, Tim Kinnon, is not present. Therefore, they are proceeding tonight with three members. There is a quorum present; they are technically allowed to proceed and make decisions on applications but they have historically permitted applicants the opportunity to opt for a continuance if they want to have more members sitting because if they proceed with a quorum of three they have to have a unanimous decision instead of three of the four. That is an option they typically provide an applicant, and it does not count as a continuance under the procedure that permits two continuances before having to reapply. He would say publically that as there are only three of them, if the applicant would prefer to have it continued until there are four of them, he should let them know at the beginning.

### **III. INTRODUCTION OF BOARD MEMBERS**

Paul Monzione, Chair, introduced the following:

Stacey Ames, Planning Assistant  
Sharon Penney, Town Planner  
Timothy Morgan, Member  
Stephen Hurst, Vice Chair  
Paul Monzione, Chairman

Representative from Board of Selectmen not present

### **IV. APPOINTMENT OF ALTERNATES**

None required

Before proceeding with the agenda, Chairman Monzione read a brief 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. INTRODUCTION OF THE AGENDA**

S. Penney stated that they have a letter from Stephen Rogers for Case Z09-12, which they received on September 9<sup>th</sup>, to again continue their application. This is the second request for continuance; they are asking to postpone to sometime in February due to delays with their state permits.

P. Monziona stated that he would have to recuse himself from any decision or discussion concerning this case; with his recusal, there is no longer a quorum. T. Morgan brought up that they are, at this point, they are approving the agenda.

The first case, Case Z09-12 is off the agenda for this evening and continued.

S. Penney went on to say that the new applicant on the agenda, Case Z09-18, has asked for a continuance until next month. The representative for Carl and Donna Backman, Case Z09-16 is present, so one of the three posted applications can be dealt with tonight.

**S. Hurst made a motion to continue Case Z09-18 until the November 5 meeting. T. Morgan seconded the motion, which passed unanimously.**

**T. Morgan made a motion to accept the agenda for October 1, 2009 as amended. S. Hurst seconded the motion, which passed unanimously.**

## VI. CASES

Case #Z09-16 Carl and Donna Backman	Map 79, Lot 37	Special Exception 490 Rattlesnake Island
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*Application submitted by Thomas Varney of Varney Engineering on behalf of applicants Stephen and Donna Backman to request a Special Exception from Section 300 Article 320(B) to tear down and rebuild the front of an existing cottage in the existing footprint however expanding the living space up to meet the roofline of the newer back part of the cottage. This parcel is located in the Lakeshore Residential zone.*

T. Varney came forward and introduced himself. He referenced the last meeting at which they had been told they needed a retroactive building permit because none was in the file. The following day, the Backman's were at the steps of the Town Hall trying to get a building permit. They had to wait until the Shoreland Permit was approved. They have been waiting; that has been submitted. The reviewer called Mr. Varney today and said that he was looking at it and he had some questions. Mr. Varney answered his questions. The reviewer said it was fine and he would approve it when he got back to the office; he was home sick. Mr. Varney asked if he could e-mail something for tonight's meeting. The reviewer, Mr. Jason Aube of NH-DES, sent an e-mail stating that "after thorough review of the Shoreland Impact Permit Application it appears to be approvable, and it is likely a permit will be issued next week. In the meantime, please stabilize the existing site to assure sediments are unable to enter the surface waters."

T. Varney went on to say that they are still technically on hold for the permit, but this tells them it is on its way. If they (the Board) accept that, they can have this discussion about this; if not they can come back in November, and he would ask for a continuance if he needs to. Other than that, he can give a rundown of what they are trying to do, as he was unable to do that last month.

P. Monziona clarified the concern they raised last time, which was whether the work that was being done or the changes to the structure were being done in accordance with a building permit

that had been issued to allow the work. The concern they had, as he went through the criteria and the regs and everything was the reference to “lawful site” and “legal”; there was all the legal language that would have impacted their ability to say whether they were meeting the criteria to get the application granted. Without knowing whether the work was permitted, they agreed that the applicant should go back and clarify the permit issue, at which point the Board would be comfortable and would be able to do it. He understands now that the permit is conditioned on getting the DES permit in place; it looks like the DES permit is likely to be granted, at which point they need to go back to the town and at that point the applicant thinks it is likely they will get the town permit because it is conditioned on this (the DES permit).

As they sit now, there still is not a building permit for the work that either has been done or that they are applying to get done. T. Varney confirmed this. P. Monziona stated that is the first issue they need to take up; to see whether they should proceed or, as Mr. Varney had suggested, continuing until they can come in with a permit.

T. Morgan stated that he would be much more comfortable if this were continued and Mr. Varney came back in and had the permits in place. He also thought that, since there were only three of them, this should not count as a continuance so they protect their rights as to the number of continuances allowed to an applicant.

P. Monziona agreed, stating that there are two cases in lawsuits now and it is much better to have everything done properly all the way along the line.

S. Hurst concurred, saying he would also be more comfortable if the permits were in place.

P. Monziona stated that T. Morgan’s suggestion that this not count as one of the two continuances before having to reapply was good. He explained that currently, the new application even says that if there are more than two continuances, you have to reapply, though the Board does have discretion on this. Since there are only three of them here tonight, T. Morgan should make a motion for a continuance to the next meeting.

T. Varney was asked if he thought they would have the permits by the next meeting. He said he did not know; maybe they would never get the permits because they needed Board approval first and they were in an endless circle. He really didn’t know. He would assume they would. He is here because the contractor would like to get going to work. He would like to get started.

P. Monziona said that when he looked at the regs, there were the circumstances under which this can be granted. The description is that all lawful things have been met. T. Varney said he understood that. P. Monziona said that if they issue a variance on something where a permit wasn’t even issued, what have they done?

S. Penney stated that Mr. Boyers, the code officer, went out around Rattlesnake Island and took a look. Apparently, there is an outhouse on the property, which is in violation. Just a heads up to everybody that it won’t pass muster either. Unfortunately, the date stamp on those (photos she handed around) was wrong; October 23 has not occurred yet this year, it was September 23. Just an FYI, there are a lot of loose ends here.

S. Ames said that the only reason this was being brought up is because this is actually part of the criteria that has to be met for Special Exceptions – sanitary sewage disposal and water supply has to be met. An outhouse certainly does not meet that criterion.

T. Varney said they have a state approved septic system and the outhouse was there before they had the septic system, they just haven't taken it out of there. S. Penney asked if it is in use. T. Varney said it is in use, they just haven't run the pipe over to the septic system. S. Ames stated that an outhouse is not adequate sanitary sewage disposal.

P. Monziona thought that when they got to the presentation of the application they will address all these things and they will demonstrate whether they meet the criteria and the Board will vote on that. He hopes all four of them will be there; T. Kinnon will be there. He was called out to work tonight. There will be four of them at the next meeting, and the applicant can address all the appropriate issues at that time.

**T. Morgan made a motion to continue Case Z09-16 until the meeting of November 5, 2009 and further move that the continuance not count against the applicant as it is a result of the fact that there are only three members of the Board seated at this meeting. S. Hurst seconded the motion, which passed unanimously.**

## **VII. OLD BUSINESS**

P. Monziona requested that the Board continue with approving minutes. S. Ames requested as a point of order, that discussion return to the Rogers case and when it should be continued to. A specific date needs to be stated. T. Morgan stated that, as there is not a quorum at this meeting to discuss a date, they just automatically continue it to the next meeting on November 5.

September 3, 2009 minutes

On page 1, Stephen Hurst should be Vice-Chair, not Member

On page 1, should be noted that Board of Selectmen representative, Patricia Fuller, was not present

On page 2, there is a formatting issue. Going forward, each case should have a header identifying the Case, the applicant, Map and Lot, what the request is, and the location

On page 3, last paragraph where it says "the only thing confirming of the existing setback..." should be "the only thing conforming with the existing setback structure is the distance to the east side line setback."

On page 9, fourth paragraph, 2<sup>nd</sup> sentence "what raised the red flag was the CPS..." should be expanded to say the CSPA (Comprehensive Shoreland Protection Act) 50' setback.

Also in that paragraph, should read "she stumbled onto that fact...because she was trying to ascertain the height dimension of the first rebuild, but there was no application for a building permit."

Same page, next paragraph, "it's its is" should simply be "it's"

Correction to the spelling of Mr. Boyers' name; anywhere it appears as Boyer, should be Boyers

**T. Morgan made a motion to approve the minutes of September 3, 2009 with the amendments and corrections made by the Board. S. Hurst seconded the motion, which passed unanimously.**

#### **VIII. NEW BUSINESS**

Brochure defining unnecessary hardship goes into effect January 1, 2010. S. Ames will come up with new worksheets. Short discussion of this subject.

S. Penney verified that the members had been given the Legislative Update.

#### **IX. ADJOURNMENT**

**T. Morgan made a motion to adjourn; seconded by S. Hurst and passed unanimously.**

Meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session