

Members Present: Timothy Morgan (new member), Lyndon Avery, Acting Chairman Marcella Perry; Angela Bystrack (new member), Keith Chamberlain; Timothy Kinnon, Alternate.  
Others Present: Planner, Kathy Menici; Secretary, Nancy Pritchard.

**Call to order:** Marcella Perry, Acting Chairman called the meeting to order at 6 p.m.

Kathy Menici read into the record the motion to consider for rehearing as follows:

**Case #Z05-35  
Robert Gayner, Trustee**

**Map 53, Lot 3**

**Motion to Reconsider  
And for Rehearing  
62 Temple Drive**

Motion to Reconsider and for Rehearing submitted by Walker & Varney P.C. on behalf of property owner Robert Gayner Trustee for Case #Z05-14 – Administrative Appeal, regarding the August 25, 2005 ZBA decision upholding the Cease & Desist Order issued by the Town of Alton Building and Code Officer on September 28, 2004. The property is located at 62 Temple Drive in the Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

M. Perry: Although this is a public meeting, this is for the purpose of deliberating the case to reconsider and for rehearing to see if there are new findings or facts to justify that.

Keith Chamberlain stepped down from this case to avoid any perceived or real conflicts of interest.

**Appointment of Alternate:** Vice Chairman Marcella Perry appointed Alternate, Timothy Kinnon, to sit in for Keith Chamberlain.

M. Perry: We need to find out if there are any new incidents or any new information of finding of facts to bring this to another hearing or just schedule another hearing.

T. Kinnon: After reading the motion to reconsider a rehearing, I haven't seen any new evidence presented by the applicant. I feel this board on two occasions has given the applicant ample time to present a case to us and I think they have done that, and I feel the case should stand as it was.

L. Avery: I am in agreement with that. I feel there is no new evidence presented in the motion here at all.

**Motion made by L. Avery that we deny this reconsideration for rehearing on Case Z05-14.  
A. Bystrack seconded the motion. The motion was carried with all in favor.**

At this time Keith Chamberlain resumed his place on the board.

K. Menici read the following case:

**Case #Z05-36          Map 21, Lot 5-6  
Robert and Sandra Bahre**

**Motion for Rehearing  
Hopewell Road**

Application submitted by Alton Board of Selectmen for a Rehearing on Case #Z05-23 regarding the September 1, 2005, ZBA decision granting the property owners request for an Administrative Appeal to overturn the decision of the Building Inspector and allow the issuance of a building permit in order to construct a building to store the property owners' antique and collectible automobile collection; and for a Rehearing on Case #Z05-24 regarding the September 1, 2005, ZBA decision granting a variance to allow the property owners to construct a building with an average roofline of 45.5' in height where Article 200, Section 228B, Height Restrictions, of the Alton Zoning Ordinance allows a maximum height of 35'. The property is located on Hopewell Road in the Lakeshore Residential Zone, the town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

M. Perry: The motion in this case is for the board to deliberate on. There will be no input on this.

M. Perry: The motion to reconsider. Now comes the Alton Board of Selectmen where in referred to as the Board and pursuant to RSA677:2 moves for reconsideration of the Zoning Board of Adjustments hereinafter referred to as ZBA August 31, 2005, action in the above captioned matters in support thereof states as follows.

K. Chamberlain: I noticed in both of the attorney's briefs the appeal of the administrative decision filed by the Board of Selectmen claims the date was 8/31/05 when the Alton Zoning Board of Adjustment made their decision. Our board actually convened and heard this case on 9/1/05, not 8/31/05. That is a point of interest and probably a point of law that will be interesting if we had legal representation that we could get an answer to that. I don't know if that would throw the case out on its ear or whether it would be considered a minor error in this case. Obviously we all know as members of the Board of Adjustment the rules of a rehearing. On page 43-45 in the Zoning book for the State of NH states the purpose for the rehearing. What we are looking for is mistakes of fact and new information that hadn't been heard at the first hearing, and a motion for a rehearing should be set forth fully for every ground upon which it has claimed the decision or order of his complaint is unlawful and unreasonable. We have convened this hearing within the 30 day time limit which is by law what we have to do. A rehearing is based on the code officer's administrative decision and I will quote it and this is what the Alton ZBA was hearing: "At this time your building permit application has been denied for your garage in the Lakeshore Residential Zone. Only residential garages are allowed, such as two car garage structures." That was the order that the Alton ZBA was hearing on appeal. It seemed to me that in the Board of Selectmen's motion to reconsider, a great deal of onus was placed on recreational uses not for profit, and I would like to state for the record in my personal opinion, that the ZBA did look at what the appeal was based on which was the code officer's denial. I would also like to point out that the board's motion was to overturn the building inspector's denial of the building permit. As I compared both of these motions to reconsider, an objection to reconsider if you want to go through each of these individually we could, but I didn't find any evidence from the Board of Selectmen that would make me think that this hearing should be

heard again. After careful review, I do not feel that the moving party has been persuasive, that the Board has made a mistake, and also that new facts were brought up, but in light of the careful review I have made, I would like to make some recommendations to the board.

- A) If it is at all possible due to the lack of legal representation to the Alton Zoning Board of Adjustment that we could continue this rehearing to the next regularly scheduled ZBA meeting in order for independent legal counsel being afforded the ZBA regarding this case.
- B) That automatically approve a rehearing tonight would be premature and a potential injustice to the applicant who would have to defend his interest of position a second time.
- C) We have the choice to make a motion to deny the rehearing.

Lyndon Avery: When we made our original decision, we spoke of interpreting the ordinance, and no where in the ordinance did it say anything about the size of a garage which could be built. I noticed also in the paperwork from the motion, they talk about the height of the building and not being in the spirit of the ordinance. This particular building is being built in the very same likeness as the applicant's primary home, and no abutter had any problem with it when you consider public interest. The building itself is on its own separate lot, not even on the same lot, and with concerns to the living quarters they intend to put in it. In my opinion, and as I felt at the original meeting, I saw no problem with granting the request.

Tim Kinnon: The first part of the motion speaks specifically to the definition of recreational use. I do feel that Mr. Chamberlain brought it up at the original hearing, that this is actually a residence with a garage. The applicant has stated it in reverse, a garage with a residence, but it is what it is, it is a residence with a garage, and no where in the Zoning Ordinances does it prohibit the size of the garage. Albeit it is very large, a 70 car garage, there is no wording to prohibit that, so I feel that the motion to reconsider in the first case does not have any new evidence or any evidence that is relevant to the original decision made by this board. The second part of this case in regard to the height restriction, I do feel that there is room for further discussion on that. When we get into this area of hardship concerning the special conditions of land and the uniqueness of it, it is very difficult to put a hardship on a condition when the condition is being made by the applicant. The applicant wants to build a structure that at some points does go up to 56 ft. The applicant has created the hardship which I don't feel is a good prong for us to use in granting a variance, so I do feel there is room for further discussion on the second case.

M. Perry: I haven't changed my opinion from the first hearing. I had very strong reservations on the recreational use not for profit, and there being no definition to support that. I think we are opening up Pandora's box by just assuming that means an individual's recreational use. I think this is far more reaching than just what we had considered. I think we were looking at a very narrow scope and I think we should consider seeking legal help in determining in the scope of what that meant, and that is what I initially said the first time. I don't think we researched that enough when we made that decision. The second case on the height, I feel that because they had taken precautions to take care of the safety aspect of it, for me it wasn't a problem, but I definitely think the first case is a problem.

T. Morgan: I did not hear the testimony so I form my opinion solely from reading the record, but I agree with the chairman that we probably haven't properly considered the definition, the

meaning, and the intent of the definition, and I am also concerned about meeting some of the tests under the case cited at the end of the first brief, and for that reason I suggest we consult with counsel to get some advice on both of those issues.

K. Chamberlain: I would like to add this: "From the Alton NH Zoning Board of Adjustment Bi-Laws, amended on 10/3/02, specifically to Section 10.1 appeal from Administrative decision. " This is not a complete sentence, but the meat of the matter is a copy of the code official's written decision must be submitted along with the application. Basically, what the Building Inspector issued is clearly shown as Exhibit A in the Objection to Motion to Consider, and I will read it again to you. This is what we were hearing the case on, not recreational uses not for profit. If that is what the case was that we would be hearing for the ZBA, it should have been on this document. This document says "Regards building permit for garage application. Dear Mr. Bahre, At this time your building permit application has been denied for your garage in the Lakeshore Residential Zone. Only residential garages are allowed, such as two car garage structures. If you agreed with this decision, please feel free to appeal to the Zoning Board of Adjustment." No where does it say anywhere from the building inspector that we were determining whether it was an allowed use to build this structure in the Lakeshore Residential Zone under recreational use not for profit.

M. Perry: This was an argument that was brought up by the client and his attorneys at that hearing and it is in the minutes that this was the justification for the size of the building in their argument to us. If you look at the minutes it is in there.

K. Chamberlain: I personally feel if we were to discuss the case on the merits, and it said specifically from the building inspector that we were hearing the case on recreational use is not for profit, that was what we should have had to deal with. Consequently, as I look at the motion to reconsider by the selectmen, and look at the denial or the objection of motion to reconsider, I feel .....

M. Perry: If think that only strengthens the motion to reconsider. It strengthens the motion to take this under advisement with our attorneys and then to reconsider the case.

K. Chamberlain: I also have made a point that I don't think it would be fair to go for a rehearing on this and make both parties to this objection redo the case. My suggestion is that we continue the motion for the rehearing until the next regularly scheduled meeting, so we can meet with Attorney Bernie Waugh to answer some relevant questions. That I think is within the power of the board. The people have actually applied within the 30 day time limit, so they have met the statues of the ZBA. I feel because Attorney Sessler has written this motion to reconsider for the Selectmen, I don't feel I have had adequate chance to speak to legal representation. It has taken a while for this to happen; it took a long time for this case to be heard; we were given very short notice about this case. It came up at our last hearing on October 6 why we had not heard about this rehearing sooner. I think it would be wise to continue this so that we the Alton ZBA can seek legal representation and answer some of the questions that we have.

A. Bystrack: I would like to definitely like to continue this case to be reheard and have not had

an adequate amount of time reading this case since most of my time was spent reading the previous cases. Dealing with the uniqueness of it, I can't adequately make a decision considering there is so much gray area unknown. I would rather wait until we are able to gather up more evidence and definitions.

**K. Chamberlain made a motion that we continue Case Z05-36 for Robert and Sandra Bahre, a motion for rehearing for both cases for the ZBA meeting on November 3 at 6 p.m. at the Alton Town Hall in order for the Alton ZBA to be afforded the opportunity to seek legal counsel and representation in this matter. Motion was seconded by Tim Morgan. The motion was carried with all in favor.**

The ZBA will also meet with legal counsel Bernie Waugh on October 24 at 6:30 p.m. at the Town Hall. Kathy will confirm this meeting time with counsel.

**Adjourn: Motion made by K. Chamberlain to adjourn at 6:30 p.m. Motion was passed with all in favor.**

Respectfully submitted,

Nancy Pritchard  
Secretary Pro-Tem