

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
December 4, 2014
Approved as amended 1/8/15**

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:02 p.m.

II. INTRODUCTION OF CODE ENFORCEMENT OFFICER AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, Board members, and Staff:

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

III. APPOINTMENT OF ALTERNATE

No alternates were needed for this meeting.

P. Monzione explained that no new cases would be called after 10:00 p.m.; a case in progress at 10:00 p.m. would be finished, but any case not started by 10:00 p.m. would be continued to the next meeting. He also explained that once public input has been heard for a case and the applicant has responded to public input, no further input will be accepted.

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

Continued cases were moved to the beginning of the agenda, and Cases Z-14-30 and Z14-31 were swapped to be in the correct order.

S. Miller made a motion to approve the agenda as amended. P. Larochele seconded the motion which passed unanimously. (5-0-0)

VI. CONTINUED APPLICATIONS

Z14-18 Robert and Joanne Wyszynski	Map 70/Lot 5	Amended 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 to remain in their present location. The property is located in the Rural (RU) Zone.

P. Monziona read the case into the record. Attorney Arthur Hoover of Ransmeier and Spellman, and Mrs. Joanne Wyszynski came forward to present; the application was accepted as complete at a prior hearing.

Attorney Hoover explained that some of the issues raised originally have been resolved; the generator, septic vent pipe, and fire pit have all been relocated outside of the setback area. This leaves only the residence in non-conformity; it is between 4.5 and 8.5 feet from the property line. This is a violation of the 10' setback, which had been an issue for the abutter Mary Kober; currently, a settlement has been reached and Ms. Kober has withdrawn her objection via her attorney.

P. Monziona asked if the generator location is suitable; J. Dever has inspected the new installation with the plumber and electrician and approves of the new location.

Attorney Hoover explained the chronology leading to discovery of the lot line discrepancy. Several years passed between the Wyszynski purchase of the property and the survey done by Ms. Kober which proved the location of the lot line was not the shrub line, as had previously been assumed by all parties involved, including the previous owners of the Wyszynski property, the engineer who designed the septic system, and the contractor who built the house, as well as the abutter, Mary Kober. Additionally, the previous building inspector, Brian Boyer, issued permits based on the shrub line as the property line.

In 2007, the Wyszynskis obtained permits to replace the existing seasonal cottage with a year-round residence; the Certificate of Occupancy was issued in 2010. The non-conformity was discovered 2 years later, in 2012, by Mary Kober as a result of the survey she had done with the idea of adding on to her home.

A portion of the Wyszynskis' home is in the 10' side setback; this was not discovered until the survey was completed. This was not an outcome of ignorance of the law or bad faith; the owners, contractors, building inspector, and abutters all relied on an incorrect lot line. This non-conformity does not create a nuisance, interfere with use, or diminish the value of other properties in the area, nor does it create any hazards to the abutting property. This is a small part of the residence and includes a portion of the front porch, kitchen, first floor bedroom, second floor bedroom and the basement. The entry to the house is not in the setback, so entering and exiting the home does not occur in the setback area. The remaining rooms in the setback area do not have outside access; all activities in the setback area are normal residence activities within the structure and do not impact the abutting property. Attorney Hoover clarified that there are no boundary line violations; the violation is to the setback.

There is adequate land area between the side of the house and the property line to allow the owners and their guests to access the rear of the property without trespassing onto the abutting property. This non-conformity does not diminish the value of other properties in the area; this is a residential property located within a residential sub-division and the use is the same as all the others in the area. The year-

round residence is an improvement to the previous seasonal cottage. The encroachment into the side setback does not prohibit the abutter, Mary Kober, to obtain permits to complete construction to her home which improve the tax assessment to that abutting property. The improvements to the Wyszynski home did not change the use, but did increase the assessed value, which also helps the value of surrounding properties. The non-conformity does not interfere with the use of surrounding properties in the area; the only use permitted is residential.

The cost to the Wyszynski's, if the residence had to be relocated to comply, would be estimated at \$74,400 to \$208,800; this far outweighs any value to the public if the request were to be denied. Currently, there are no abutter objections, and no objections or concerns are noted in the Department Head Comments.

P. Monziona referred to a letter submitted by Attorney Frank Spinella on behalf of the abutter, Mary Koburg; the objections of the abutter Mary Koburg have been withdrawn via correspondence from Attorney Spinella. P. Monziona stated that the points made in the original letter from Attorney Spinella still need to be addressed, regardless of any agreement reached between the applicant and the abutter. In the original letter, Attorney Spinella raised "willful blindness," stating that the applicants' "failure to establish the line with a survey was under the circumstances recklessness if not willful blindness." Attorney Spinella also made reference to an iron pin that should have made it obvious that the structure would be in the setback. Additionally, he felt that no measurements were taken at all. P. Monziona explained that the Board has to look at certain criteria, and one of those is that the discrepancy was not known or noted by any owner, former owner, or owners' agent. Additionally, there is a reasonableness standard on the part of the applicant to find these things out. He asked for any evidence that the town building inspector at that time verified that the structure was within the setback.

Attorney Hoover stated that the Wyszynskis could testify to the fact that the previous property owner told them that the property line was the shrub line between the two properties. She could also testify that the shrub line was assumed as the property line by the abutter, Mary Kober; there was no reason to believe there was an issue. Also, the residence at the time the Wyszynskis purchased the property was a smaller seasonal cottage; the current home was made larger and relocated on the property. Tom Varney prepared the plot plan for the septic system, using the same information concerning the side line. The contractor who built the residence was also of the assumption that the shrub line was the property line.

There was a short discussion about the iron pin referenced in Attorney Spinella's letter; Mrs. Wyszynski is aware of an iron pin at one corner, but it is at the lake side of the property, not the road side where the line is in contention. John Paulus laid out the stakes with the previous building inspector because John wanted to be sure of the setbacks. John Paulus was the contractor who, with the building inspector, laid out the property line and determined the location for the residence.

J. Dever interjected that there is a plot plan in the original property file that indicates that the setbacks were located 10' from the side line; this was submitted and reviewed and verified by the previous building inspector. He believes this plot plan would have been created by John Paulus. P. Monziona stated that it is his feeling that it is not the responsibility of the town building inspector to measure and verify boundary lines, and if someone is representing on their application for a building permit that they are within the setbacks, the code enforcement officer should be able to rely on that information and then go to the property and draw the lines. Attorney Hoover represented that the pin referenced by Attorney Spinella is the one that is on the lake side, not at the road; Mrs. Wyszynski agreed. Attorney Hoover also added that the previous Code Enforcement Officer participated in staking and marking the

boundary lines, so the information was not blind to him. All of this was obvious, and yet the neighbor did not object until she conducted her survey. The actions were reasonable under the circumstances, and everyone acted under the same assumption of where the boundary line was located.

T. Morgan asked how the footprint of the current residence compares with that of the cottage that was replaced. Mrs. Wyszinski explained that 1/3 of the original cottage was removed, the remaining 2/3 was relocated, and the two story portion of the current structure was added to that. Attorney Hoover stated that the current home is not in the same footprint as the original cottage. The ten year rule will not apply because the current structure has not been located on the property for 10 years. S. Miller asked if the fact that the discrepancy with the location of the side line goes back more than 10 years counts for this condition. Attorney Hoover does not feel that it does count because the structure was not inside the setback area until more recently.

Public Input – There was none; public input was closed.

The Board went to deliberation. L. LaCourse questioned the failure to inquire. P. Monziona explained that there is a reasonableness standard here; the property owner was given a plan by a qualified contractor, and that was backed up by a town official. S. Miller stated that you should not have to count on the code enforcement officer for something like this; he is not a surveyor and therefore he relies on the information that is given to him. This is a case of “non harm, no foul.” There are no conceivable consequences, and he is inclined to grant the waiver without a significant reason from the abutters who are defending their own property lines. T. Morgan added that the previous building inspector actively participated in this, and if there is a denial of the waiver with respect to the regs, there could be an issue of municipal estoppel. P. Larochelle added that the previous building inspector could have requested the home owner to have a survey if he had been uncomfortable with the information given to him. L. LaCourse added that any shrub row or fence placed along a boundary could be at least visually a property line; at some point, it becomes the line in people’s minds.

WORKSHEET

P. Larochelle stated that the violation **was not** noticed or discovered by the owner or former owner, owners’ agents or representatives, or municipal official until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. T. Morgan agreed that it was not discovered timely. P. Monziona also agreed, as did L. LaCourse. S. Miller agreed and added that the Building Inspector made the error in 2010; it was CO’d and okayed and in 2012 it was discovered.

T. Morgan stated that the violation **was not** an outcome of bad faith on the part of any owner, or owners’ agents or representatives, or ignorance of law or ordinance, or failure to inquire. He thinks it was not an outcome of bad faith. P. Monziona agreed and added that given the totality of circumstances, and most importantly the choices made by the town Code Enforcement Officer, a lay person would have the right to assume that the boundary line was as it was being treated. L. LaCourse agreed. S. Miller agreed and added that the owners acted in good faith; they used a certified septic design plan from a qualified engineer, and they got the necessary permits and they did rely on experts. P. Larochelle agreed.

P. Monziona stated that the physical or dimensional violation **does not** constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. There has been no testimony or other evidence presented that the current structure as it exists in any way constitutes a nuisance, public or private, or

that it diminishes the value of any property in the area or interferes with any of the uses. L. LaCourse agreed and added that the shrub line is still there so it provides privacy for the abutter. S. Miller agreed and added that the area of non-conformity does not generate any hazardous conditions, all the egress are essentially within the property line. P. Larochelle and T. Morgan both agreed.

L. LaCourse stated that due to the degree of past construction made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it **would be inequitable** to require the violation to be corrected. The cost would be a minimum of \$74,000 up to \$208,000, and that far outweighs the fact that the house was accidentally put within the setback. S, Miller agreed and added that there is no impact on the abutters, the proposed use is not changed, and the value has been improved. P. Larochelle and T. Morgan both agreed. P. Monziona agreed and added that these waivers should not be given when someone comes in and tries to get around the Zoning Regulations by pretending they did not know what was going on. But, if in good faith they didn't know, then they are entitled to a waiver. This was done in good faith.

S. Miller made a motion to grant the equitable waiver of dimension requirements. P. Larochelle seconded the motion which passed unanimously. (5-0-0)

Z14-26 and Z14-27 Allen and Elena Emory	Map 34/Lot 18	Special Exception and Variance 67 Rand Hill Road
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Allen and Elena Emory are requesting:

1. *a Special Exception to Section 320 A.4. to replace an 832 sq. ft. cottage with a 2,016 sq. ft. cottage, and*
2. *a Variance from Section 327 A.2. and 327 A.3. to permit the cottage to be rebuilt in the 25' setback from the road.*

This property is located in the Residential(R) Zone.

P. Monziona read the case into the record. Allen Emory came forward to present this case; the application was accepted as complete at a prior hearing. P. Monziona recalled that there had been a question of what order to hear the special exception/variance in.

Mr. Emory stated that there was a discrepancy on the PDF plan he had provided to the Board with his original application; the house was designed at 48' wide, but the PDF version of the plan showed the house to be 59' wide, which is what caused it to appear to be encroaching on the side setback. The house will actually be 48' wide and will be placed right at the side setback line of 10 feet from the line.

T. Morgan stated that the drawing in his packet still seems to show that the cottage is in violation of the setbacks; J. Dever explained that new drawings had been submitted showing the correct size and location of the cottage.

P. Monziona clarified through questioning that the Special Exception is to expand the non-conforming use, and there was a request for a variance to permit the expanded cottage to be in the 25 foot R.O.W. setback. At the original hearing, it was noted that the side setback would be in violation, so a variance was needed there as well; the variances would need to be dealt with before the special exception could be granted because the special exception could not be granted if it was going to create greater non-conformity. Now, it appears there is no need for the side setback variance because the proposed structure does not encroach into the 10' boundary line setback. Mr. Emory verified that there is no need for the additional variance, so essentially they are back where they left off at the first hearing, without the need for the second variance as the structure will be within the side setbacks. P. Monziona clarified that the requests currently are a Variance from Section 327.A.2. to allow the cottage to

encroach into the 25' R.O.W. setback, and a Special Exception to allow replacement of a non-conforming use with a larger non-conforming use; the non-conformity is due to there being more than one residence on the lot owned by the Christian Conference Center.

L. LaCourse asked about the location of the other cottage on the lot; it is located diagonally across the lot from the proposed structure. L. LaCourse noted that the lot seems large enough to allow placement of the home within the setbacks; Mr. Emory explained that there is a lot of ledge and that the lot is steep. Additionally, that would make him very close to the other property. He is as far back into the ledge as he can go. The porch on the existing cottage is not going to be on the new one, and the access door will be on the side, which helps pull away from the right of way. J. Dever concurred and added that the applicant is going to be limited to a slab because of the ledge and the pitch. The rear of the existing cottage is gone as the present owner thought to renovate.

L. LaCourse asked if not including the porch as it is on the present cottage helps to decrease the non-conformity; Mr. Emory stated that it does. L. LaCourse stated that there is more square footage of non-conformity now. Mr. Emory explained the condition of the current cottage; the back 2/3 of the structure has been torn down with only the front face remaining and open. P. Monziona explained that the additional square feet in the setback is not making it more non-conforming; the proposed structure will be 15.2 feet into the setback where the current structure is more than 20 feet into the setback.

P. Monziona stated that the testimony explains the variance and asked Mr. Emory if there was additional information for the special exception. After discussion, he stated that he would like to proceed with the variance only first because if it is not granted it would negate the Special Exception.

Public Input regarding the Variance – there was none; public input was closed. Mr. Emory had no further input.

WORKSHEET

T. Morgan stated that the variance **will not** be contrary to the public interest. This is an unusual area within the Town of Alton in which there are a number of cottages with common land, and this is the replacement and improvement of one of those cottages, and in keeping with the character of the area and an improvement to an existing cottage, it is in fact in the public interest. All members agreed.

P. Monziona 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. The spirit of the Zoning Ordinance is to make sure that structures are located in a reasonable manner on a given lot, and this is a unique lot, even though it is one lot within the larger campground. The Master Plan contemplates these types of structures; the charm and character of the cottages up there. This is an improvement over the existing building, and if anything, it will improve the convenience, health, safety, and character of the district. All members agreed.

L. LaCourse stated that by granting the variance, substantial justice **will be** done; basically for all the same reasons just given by P. Monziona. S. Miller and P. Larochelle agreed. T. Morgan agreed and added that the value to the applicant far outweighs any detriment to the community as a whole. P. Monziona agreed

S. Miller stated that the request **will not** diminish the value of surrounding properties; no testimony was given to indicate otherwise. P. Larochelle and T. Morgan agreed. P. Monziona agreed and added that there was no evidence or testimony of any abutters that indicate that improving this structure will diminish the value of the surrounding properties. L. LaCourse agreed.

P. Larochele 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. T. Morgan agreed that the proposed use is a reasonable one; the use is not changing other than that it will be a sealed and more protected building. The testimony concerning the property and the presence of the ledge and steep rise and elevation of the property means that it is an unusual piece and this is the best way to make use of it. P. Monziona agreed and added that he feels that other conditions of the property are that it is in the area of the Christian Conference Center where there are a number of cottages situated there. L. LaCourse agreed. S. Miller agreed and added that the Board has an obligation to facilitate the rebuilding of the campground.

S. Miller made a motion to approve granting of the variance; L. LaCourse seconded the motion. P. Monziona requested an amendment to the motion to include a condition that the requirements of the Alton Fire Department as stated in the letter of October 31, 2014, from Assistant Fire Chief Brian Ridley be addressed and satisfied. S. Miller accepted and amended the motion as such; L. LaCourse maintained his second. The motion passed unanimously.

The Special Exception portion of the case was addressed with regard to Section 320.A.4 which expands the non-conforming use due to the increased size of the cottage. Mr. Emory explained that part of the increased space is due to the contractor request that the dimensions be divisible by 4. Another reason is because he is going to be building on slab which means there would be no basement or crawl space for storage of necessary items. S. Miller asked about the cost of not increasing the dimension to accommodate the contractor request that the dimensions be divisible by 4; Mr. Emory answered that there would be an additional cost of about 12%. Going smaller to accommodate the contractor would have made the rooms too small.

P. Monziona noted that with granting of the variance, there would be no additional non-conformity in regard to setbacks. The use is not changing; it will remain residential. It will expand the use in that it will be year-round, but the use will still be residential.

Public Input regarding the Special Exception – there was none; public input was closed.

P. Monziona read the requirements of the Special Exception; all requirements have been met, particularly with granting of the Variance noted above. T. Morgan added that with the variance and the fact that the home is pulled back from the westerly boundary, the only non-conformity is that this property is in the Christian Conference Center; if it were not in the Christian Conference Center, the applicant would not need to be here.

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** an appropriate site for the planned use; the Christian Conference Center has a little more of a concentration of structures than might be found elsewhere in town, and moving the structure might have impacted the safety of the structure with regard to fire. S. Miller and P. Larochele agreed. T. Morgan agreed and added that it is an appropriate location for the use as the use is not changing. P. Monziona agreed

S. Miller stated that factual evidence **is not** found that property values in the area will be reduced due to incompatible uses. There is no incompatible use and there has been no testimony on property values

other than that it is going to be a larger and more conforming residential structure. All members agreed.

P. Larochelle stated that there **are no** valid objections from abutters, based on demonstrable fact. T. Morgan agreed and added that at the prior meeting there was a representative of the abutters present, and he was supportive. 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; there is no vehicular traffic involved in this area, and the home has been drawn back from the right of way, so there is no undue nuisance. 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; information in the application indicated that there will be adequate septic and water and appropriate facilities and utilities. All members agreed.

L. LaCourse stated that **there is** adequate area for safe and sanitary sewage disposal and water supply; a significant amount of work has been done on the Christian Conference Center to expand. P. Monziona concurred and added that at the last meeting information was given to indicate that it is sufficient for this building. All members agreed.

S. Miller stated that the proposed use or structure **is not** consistent with the spirit of the ordinance and the intent of the Master Plan because it is an expansion of a non-conforming structure. That said, there is a unique situation within the campground and the new building constraints with having less units on the campground make it more consistent, but still has not met the constraint of being entirely consistent with the Master Plan. P. Larochelle agreed. T. Morgan disagreed and added that he thinks it is consistent with the intent of the Master Plan which is to make improvements to the area, which is exactly what is happening here. P. Monziona clarified the determination made by S. Miller and P. Larochelle that this is not consistent. He went on to disagree, adding that the ordinance for a special exception has criteria that allows for granting unless there are certain things that exist. It is not going to be a new use, there will be no detriment, etc., as he had outlined before the worksheet. All of what is in the application satisfies the criteria; once the applicant satisfied those, he was consistent with the spirit of the ordinance and the intent of the Master Plan, which goes hand in hand with the Zoning Regs. L. LaCourse disagreed with S. Miller for all the reasons given by P. Monziona.

T. Morgan made a motion to approve the request for Special Exception. S. Miller seconded the motion. P. Monziona requested an amendment to the motion to include a condition that the requirements of the Alton Fire Department as stated in the letter of October 31, 2014, from Assistant Fire Chief Brian Ridley be addressed and satisfied. T. Morgan agreed to amend the motion and S. Miller continued to second. The motion passed unanimously. (5-0-0)

Mr. Emory thanked the Board and asked to go on record thanking J. Dever for his help.

VII. NEW APPLICATIONS

Z14-28 and Z14-29 Jean Jennison	Map 52/Lot 8	Variance and Equitable Waiver of Dimensional Requirements 195 Route 11D
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Jean Jennison is requesting a Variance from Article 300, Section 327 of the Zoning Ordinance to permit to build a side deck and steps on the left side of the house within the side yard setback of 10 feet from the boundary line and an Equitable Waiver of Dimensional Requirements to Article 300, Section

327 to permit a side deck and steps on left side of house within the side yard setback of 10 feet from boundary line. This property is located in the Lakeshore Residential (LR) Zone.

P. Monziona read the case into the record. Attorney John Springer came forward with the applicant, Jean Jennison and Marty Jennison.

The application was reviewed for completeness. **L. LaCourse made a motion to accept the application as complete; P. Laroche seconded the motion which passed unanimously. (5-0-0)**

T. Morgan questioned the need for both the variance and the equitable waiver. Mr. Springer explained that only one is needed; the application for the equitable waiver is only needed in the event that the request for variance is denied. This alternative was suggested by Attorney Sessler. Mr. Springer suggested going forward with the variance and seeing where that left them. P. Monziona asked if the stairs are already there; Mr. Springer answered that everything is already there.

Attorney Springer clarified a statement he made in the application. He stated that the stairs and deck are in exactly the same place they were prior. He meant to say that the house is in exactly the same footprint; the stairs and deck are slightly different. There were existing stairs and a patio deck there that were well inside the setback as well, to within a foot of the property. The new stairs/deck are within 6' of the property line.

There was further discussion concerning variance versus equitable waiver; the equitable waiver is only in place in the event that the variance does not pass. Attorney Springer feels that there is a strong case for the variance. He acknowledges that this is a case where good people made some bad decisions which have led to this point. He took issue with the staff review stating that there was no injunction issued; when J. Dever spotted the issue, he requested that the Jennisons apply for a variance, which was not done. The town filed suit which is when he came on board. As soon as he got the case, he contacted Attorney Sessler to try to find a way to fix this without either side incurring additional attorney fees. There is no injunction; there is a stay running through the end of December; as part of the agreement, the Jennisons are going to pay all of the town's attorney fees and they are also going to pay a small fine.

Attorney Springer explained that Jean Jennison's family has owned this property since the 1930's; Jean has owned it since 1987. The lot is 12,500 square feet and 50 feet wide. The deck and stairs on the left side are as they were on the original house; both were well into the setback. In 2007 the house was destroyed by fire. In late 2007 they applied for a foundation permit which was granted as it was in the same footprint. Building permits were issued by the code enforcement officer, Brian Boyer. Mr. Jennison met with the code enforcement officer at the property and was told by Brian Boyer that they could rebuild exactly as it was, which included the patio and stairs in the setback area because they were grandfathered. Mr. Jennison gave Brian Boyer a sketch which included the stairs and deck; Mr. Boyer gave them the go-ahead. The Jennisons rebuilt with the same access, deck, and stairs as had been pre-existing.

The issue came up when J. Dever went to the house with Mr. Jennison and informed them that a variance would be needed for the encroachment into the setback. Mr. Springer explained that he feels that a setback is in place to maintain air and space, and also for views, and for access to the rear of the property. In this case, those reasons are not interfered with. There was a deck and stairs there before. The abutting property, owned by the Kineen's, used to have a house on it; the house was taken down by the previous owner of the lot and moved across the street to the lake side; the abutting lot now has the leach field for the Kineen's home. The empty lot can't be built on, and there is no blocking of any view. The deck and stairs improve access to that side of the house and to the rear of the property.

The application is detailed, and there is a recent survey. There is no encroachment onto neighboring property. The encroachment is 9.5 feet into the setback. The lot is only 50 feet wide; the house is 30 feet wide, which is the same as the original house. A step out the side door is into the setback. S. Miller asked why the replacement house had been built non-conforming to the point where the deck was ½ foot from the lot line. Mr. Springer stated that conversations the applicants had with Brian Boyer indicated that they could do that because they were replacing the house lost in the fire. Marty Jennison stated that there is a complete set of drawings on file; they show the doors where the deck is. The drawings were part of the file; Brian Boyer saw them and told the applicant that they could rebuild where they were because the property was grandfathered, and that included the patio and the stairs. A permit was issued for the foundation, and after submission of the drawings, a permit was issued for the house. There was a sketch of what was intended for the left side of the house. Based on all those items and having received all the permits, they went ahead with the building.

S. Miller clarified through questioning that the door leading from the house onto the deck was not exactly where it had been on the original house; Mr. Jennison stated that it was on the same wall, but he could not guarantee that it was in exactly the same location. P. Monziona asked if the new structure stayed within the same footprint as the original structure; Mr. Jennison answered that it did. Mr. Jennison went on to explain that the house was originally laid out to be 28' wide, but was cut down to 27'8" due to the narrow 50' lot. This was done to meet the setback requirements. P. Monziona clarified through questioning that the structure itself is within the setbacks; only the deck and stairs are encroaching; and Brian Boyer gave them the okay to have the deck encroaching into the setback because it was grandfathered. Mr. Jennison stated that he had many conversations with Brian Boyer, and he inspected everything that was built.

Attorney Springer went through the five criteria of the variance, stating that the variance would not be contrary to public interest because it would not conflict with the spirit of the ordinance or affect the essential character of the area, and there would be no detriment to public safety. Many homes in the area have a similar look with the stairs and decks, and there is no blocking of any view. There is no conflict with the spirit of the ordinance; this is a non-conforming lot where the side access of the house remains in the new house just as it was prior to the fire. Had the fire not occurred, there would not be a need for them to be here at all.

S. Miller stated that currently the lot is located next to a leech field, and a zero lot line is being created. Whoever owns the leech field has the right to dig it up and replace it with a building, which could cause a cut in the value of that property and could cause the lot to be difficult to sell. Mr. Jennison explained that there are many owners on 11-D who have their house on one side of the road and their leech field on the other side. The lot with the leech field cannot be built on, unless it is a larger lot. Based on the size of the abutting lot where the leech field is located, the owner would have to tear down the house that is on the water in order to build on the lot currently holding the leech field. Mr. Springer added that there would be more validity to S. Miller's concern if they were not replacing what had been existing for many years in the past; a new zero lot line is not being created on a brand new building here. There is no diminution of value because the home, deck, and stairs were there back into the 30's. P. Monziona stated that the current ordinance allows rebuilding in kind to happen but may not have existed at the time of the fire at this property.

Attorney Springer stated that there is no substantial justice because the general public stands to gain nothing from denial of this request; there was a pre-existing deck and steps here, and they are consistent with other homes in the area. The loss to the Jennisons would far outweigh any public gain. The request for relief will not cause any diminution of value to surrounding properties; this has already

been discussed, and the deck and steps are very tasteful and well-constructed. Finally, literal enforcement of the provisions of the ordinance will not result in unnecessary hardship because the proposed use is a reasonable one and no fair and substantial relationship exists between the general public purpose of the ordinance provision and its specific application to this property. There is no blocking of access or view, or interference of the passage of light and air. Again, had the fire never occurred, there would still be a deck and stairs well into the setback, as they had always been.

Mr. Jennison stated at this time that he would like to put the Equitable Waiver on hold.

Public Input – there was none; public input was closed.

The Board deliberated. There were no concerns from Department Heads. S. Miller queried other Board members concerning whether allowing the variance would create an injustice by ratification of a zero lot line situation, thereby reducing the value of the abutting property. P. Monziona explained that there is no current diminution because the condition that originally created the zero lot line actually occurred many years ago, which pre-dated any zoning regulations. The building inspector at the time of the fire granted permission based on grandfathering, which may or may not have been correct. Granting the variance does not change what is there and has been since the 1930's, so this does not create the diminution of value. S. Miller agreed and added that the greater charge to the Board is to do no harm. J. Dever explained that his comment in the staff review about an injunction was a misunderstanding of a conversation he had with Attorney Sessler. P. Monziona commented that he appreciated hearing the history surrounding this, and that he respected the fact that the applicant was paying the attorney fees for the town in this case.

WORKSHEET

L. LaCourse stated that the variance **will not** be contrary to the public interest. There has been a lot of discussion about the fact that the building was there previously; it burnt down and was rebuilt in the same footprint. If there was an encroachment into the 10' setback, it still exists. S. Miller and P. Larochelle agreed. T. Morgan agreed and added that the public expressed their opinion with the warrant article about two years where they allowed this in kind rebuilding. P. Monziona agreed.

S. Miller 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. There is no demonstrable impact to any of the abutters or to the health, safety and character of the district, and a point of egress should be viewed positively. P. Larochelle and T. Morgan agreed. P. Monziona agreed and added that the big issue here is that, had the fire not occurred, this would not be happening, and the zoning regs have since been changed to allow replacement in kind so this could happen via special exception. If less non-conformity can be created, the applicant is supposed to do that, and in this case they did make the building such that the structure itself is within the setback, so it is just the deck that is encroaching. L. LaCourse agreed.

P. Larochelle stated that by granting the variance, substantial justice **will be** done; this will have no impact on the general public, and it is consistent with surrounding properties. T. Morgan agreed and added that the benefit to the applicant outweighs and detriment to the public. P. Monziona and L. LaCourse agreed. S. Miller agreed and added that the public does not gain anything with an adverse decision for the Jennisons.

T. Morgan stated that the request **will not** diminish the value of surrounding properties; this was discussed at length by Attorney Springer. P. Monziona agreed and added that there was no evidence at all that there would be diminution of value given that the condition of the property has existed for many years. L. LaCourse, S. Miller, and 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. The proposed use is a reasonable one because the use is not changing from what it has always been, and the special conditions of the property are that it is a 50' wide lot with a house that has to function. It has been in that location and with the condition of the deck and stairs for more than 70 years. Because of that, these criteria are met. All members agreed.

S. Miller made a motion to approve the request for variance. P. Larochelle seconded the motion which passed unanimously. (5-0-0)

Brief recess taken – 9:10 p.m. to 9:15 p.m.

Z14-30	Map 16/Lot 10	Variance
Thomas Revocable Family Trust		Reed Road

On behalf of the Thomas Family Revocable Trust, Attorney Arthur W. Hoover of Ransmeier and Spellman is requesting a Variance from Article 400, Section 452.B. of the Zoning Ordinance to a lot with less than 200' of road frontage. This property is located in the Rural (RU) Zone.

P. Monziona read the case into the record. Attorney Hoover and Inge Thomas came forward to present.

The application was reviewed for completeness.

S. Miller made a motion to accept the application as complete. L. LaCourse seconded the motion which passed unanimously. (5-0-0)

Attorney Hoover of Ransmeier and Spellman introduced himself and Inge Thomas. Attorney Hoover gave a little background on the applicants; Walter is a retired Air Force pilot who, after retirement, earned his PhD in Engineering and became a professor of engineering at UMass Lowell. Inge is a chemistry teacher at Nashua South High School. Walter is a Laconia native. The Thomas' are planning their retirement; they found a property at the end of Reed Road that interests them as a retirement property. Walter is focused on solar energy and they plan to build a solar energy-efficient home.

The property is a 32 acre parcel near the end of Reed Road; the property currently has an older home that requires a lot of renovation. This property is located at the point where the road turns from paved to gravel. The property had been occupied by the same family since 1946, until the Thomas' acquired it this past August. There are three small buildings including the house that was erected in the 1850's, a garage, and a small shed. All of the buildings need extensive repair.

The Road frontage on the Class V road is 377'; the remaining frontage is on the gravel portion of the road, which is a non-maintained Class VI road, which continues to the Alton-Gilford town line. There are only 4-5 additional lots on the road; one of those lots has an in-progress year-round home. Mr. Hoover displayed and explained poster boards showing the location of the property and the point where the Class V road becomes a Class VI gravel road. The poster also showed the location of a wood road that will access the new lot.

The applicants would like to subdivide this lot to create two lots. The first lot would be a two acre parcel which would contain the house and building located on the paved portion of Reed Road. That lot will have 235.17 feet of road frontage, which satisfies the 200' frontage requirement.

P. Monziona stated at this time that he has a professional relationship with the trusts showing ownership of the Werner property, which abuts the rear boundary of the Thomas property. He stated that he is general counsel to the trusts owning that property; he offered recusal if Attorney Hoover wished it, but he felt he could be impartial on this. There were no concerns voiced by Attorney Hoover or any of the Board members.

With the removal of the previously mentioned 2 acre lot with 235.17 feet of frontage, the remaining 30 acre lot will have 142 feet of road frontage, most of which will be on the gravel portion of Reed Road, which is assumed to be a Class VI road. The applicants will look to sell the two acre lot with the buildings. The Thomas' intend to build their retirement home on the 30 acre parcel, with access roughly where the wood road is now. The home will be an energy-efficient, off the grid home located at the back corner of the property. The applicants also intend to clear 6 – 10 acres to open up the views; the cleared area will be landscaped or turned into gardens. Clearing should begin some time next year, followed by the driveway, then followed by construction of the home. The applicants understand that even if ZBA approval is given, they still have to get subdivision approval from the Planning Board, and they need a permit from the Board of Selectmen allowing them to build on the Class VI road.

Attorney Hoover used another poster to indicate the location of the property, the distance of the frontage, and roughly how the lot will be divided into the two parcels.

The zoning ordinance in the Rural Zone requires road frontage of 200'; with subdivision of this lot, the large lot will have 142 feet of frontage on the road. Attorney Hoover went through the criteria for granting the variance; he stated that the variance will not be contrary to the public interest, and that it would be in keeping with the spirit of the ordinance and the intent of the Master Plan. Further, he stated that there would be no diminution to the value of surrounding properties; this house is very near the end of the road, and the only traffic will be to this property and the one remaining at the end of the road. The home is in keeping with the character of the existing area, so there would be no alteration to the character of the neighborhood. There will be one home on a 30 acre parcel with 142 feet of frontage on a Class VI road. Denial of the variance would result in a loss to the applicant that could not be outweighed by a gain to the public, as there would be no gain to the public at all. There are features of the property that distinguish it from others; it is a 30 acre parcel on a road with very little traffic, and there are very few other lots in the area. The purpose of the ordinance is to control traffic and provide safety to the public; this lot meets all of the standards of the ordinance except for the lack of 58' of frontage. The use is a single family home, just like all of the other single family homes in the district. Attorney Hoover used a visual aid to indicate the location of this property and the surrounding properties, as they are located on the road; this particular poster also indicated several other lots on the road that also do not have the required 200' of frontage. There are no objections from abutters or concerns by the Department Heads.

P. Monziona clarified through questioning that the existing home and other structures are in the ROW setback. The 30 acre lot to be created will not be further subdivided, per Attorney Hoover. The sole purpose of this variance is to create a single additional lot of 30 acres; the lot will have one single family home on it.

Public Input – there was none; public input was closed.

WORKSHEET

S. Miller stated that the variance **will not** be contrary to the public interest. The character of the neighborhood will not change, and traffic is essentially non-existent as this is the last house on the road. For all the reasons given for requiring frontage, this is not in violation of any of those. 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. There is no public health or safety issue at all, and it will be in character with the neighborhood. T. Morgan agreed and added that the reason for requiring 200' of frontage is to avoid crowding in the rural area; by creating a 30 acre lot for one house, there will be no overcrowding. P. Monziona agreed. L. LaCourse agreed and added that this is a very large lot, and there is no reason for it not to be used. S. Miller agreed.

T. Morgan stated that by granting the variance, substantial justice **will be** done; the benefit to the applicant far outweighs any detriment to the community. P. Monziona and L. LaCourse agreed. S. Miller agreed and added that the general public would not be hurt, and this is one house on 30 acres. P. Larochelle agreed.

P. Monziona stated that the request **will not** diminish the value of surrounding properties; there is no evidence presented by abutters or anyone else that the request will diminish the value of surrounding properties; this is one house on a 30 acre lot, and the 142 feet of road frontage should not present any problem that would affect values. 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 purposes of the ordinance provision and the specific application of that provision to the property; the proposed use **is** a reasonable one. The unnecessary hardship is that this is a good sized lot with less than required frontage; the lot should be able to be used properly. There is no fair and substantial relationship between the ordinance provision and this property because it is only residential. S. Miller agreed and added that the injustice would be in not allowing a house on 30 acres. P. Larochelle and T. Morgan agreed. P. Monziona agreed and added that the proposed use is a single residential structure which is appropriate in that area, and the diminished road frontage does not pose any issue or detriment.

L. LaCourse made a motion to grant the variance for Case Z14-30. P. Larochelle seconded the motion which passed unanimously. (5-0-0)

Z14-31 Peter D. Brushie	Map 36/Lot 3	Variance 129 Spring Street
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On behalf of Peter D. Brushie, Thomas W. Varney P.E. is requesting a Variance from Article 300, Section 372.A.2. of the Zoning Ordinance to permit the proposed garage to be six (6') feet from the street R.O.W. line, at the closest point. This property is located in the Residential Rural (RR) Zone.

P. Monziona read the case into the record. Thomas W. Varney and Wayne Copp came forward to present.

The application was reviewed for completeness. P. Monziona questioned the agency letters; Mr. Brushie designated Mr. Copp as his agent in this case, and Mr. Copp further designated Tom Varney as the agent. As Mr. Copp was present to represent the applicant, P. Monziona was satisfied.

L. LaCourse made a motion to accept the application for Case Z14-31 as complete. S. Miller seconded the motion which passed unanimously. (5-0-0)

Tom Varney explained that this house is located on Spring Street Extension; this house is on a corner lot. The applicant would like to replace the 1955 house with a new house which will be larger and have an attached garage. There will be a retaining wall behind the house to intercept the slope and provide a walking area around the house. There is an artesian well on site, and a new septic will be designed and installed. Drip edges under the eaves will provide stormwater management. There will be minimal disturbance to the woods and steep slopes, and lot coverage will be 10.8%.

Mr. Varney continued. The road makes a transition from Spring Street to Spring Street Extension and crosses from one side of the right of way to the other. That sets the right of way line in on the applicant property. In order to get an attached garage, the house is up against the slope in the back, and they want to avoid digging into the slope. The variance is so the house can be on level land and in harmony with the environment.

L. LaCourse stated that they are already going into the slope for the retaining wall; why not go into the slope and not take the variance? T. Varney acknowledged that and explained that going further into the slope (they would have to go 20' into a 35% - 40% slope) would be doable but not environmentally acceptable due to the increased runoff and the loss of trees. The intent is to locate the house on the land in an environmentally safe manner, and to do that, a variance is needed.

S. Miller asked how far into the Right of Way they would be encroaching; the encroachment would be about 18 feet. P. Monziona clarified through questioning where the house is located; it is at the top of Spring Street, on the left side. Access to Route 11 would be straight down Spring Street. There is a private driveway, but there is no right of way issue with the private drive. P. Monziona asked about the width of the right of way; the staff review indicates that the garage would encroach 21 feet into the right of way setback, but still will be over 25 feet from the edge of the traveled way. The right of way is 50 feet wide along the front of the property; P. Monziona suggested that if the town ever wanted to widen or improve the road, they would not be able to if this structure was encroaching into the right of way. J. Dever explained that the encroachment is into the setback, not into the right of way itself. P. Monziona clarified through questioning that there will be 21' of encroachment into the right of way setback, but the garage will still be 4 feet away from the edge of the right of way, and 25 feet from the edge of the current traveled way. Even if the right of way were to be widened, there would still be space from the structure to the edge of the traveled way.

L. LaCourse asked for clarification of the property line in relation to the right of way; J. Dever explained that the property line is the edge of the right of way.

T. Varney pointed out that beyond this property, the road comes to a dead end; it is unlikely that the road will ever change. There are no other houses close to the road, so there will be no intrusion on them. Additionally, the artesian well is located on the property, which also has to be taken into consideration. The house will not have a view of the lake, nor will it obstruct any view of the lake.

Public input, in favor – Gordon Campbell of 141 Spring Street came forward. He is one of the side abutters, and he is in favor of the project. It will improve the applicant's lot and residence, and it will not impact the traveled way of Spring Street at all. He has no objections.

There was no other input, so public input was closed.

WORKSHEET

P. Larochelle stated that the variance **will not** be contrary to the public interest. He does not believe this is going to impact any other property on Spring Street. T. Morgan agreed and added that the proposal will protect the right of way which protects the public interest. All members agreed.

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 convenience, health, safety and character of the district within which it is proposed. This is not encroaching into the right of way in any way; it is just encroaching into the setback, which is not at odds with the intent of the Master Plan. All members agreed.

P. Monziona stated that by granting the variance, substantial justice **will be** done; the purpose of this zoning regulation is not in any way being undermined by this proposed structure location, given that the right of way is still going to be fully functional and there will be no adverse impact on that. Conversely, to prohibit the structure by strict application of the zoning regulation would cause an injustice to the owner. All members agreed.

L. LaCourse stated that the request **will not** diminish the value of surrounding properties; if anything the improvement to the house will help surrounding properties. All members agreed.

S. Miller 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. There was testimony that this is a steep property behind the house that limits how far back the house can be placed, which does make the property somewhat unique. The use is reasonable because the use of the property has not been changed. All members agreed.

P. Larochelle made a motion to approve the variance application for Case Z14-31. L. LaCourse seconded the motion which passed unanimously. (5-0-0)

VII. OTHER BUSINESS

A. Previous Business: None

B. New Business: None

C. Minutes: November 6, 2014 – On page 4 of 8, first full paragraph, fourth line down, change the word “can’t” to “can”. On page 7, the final item of the worksheet, S. Miller stated that the proposed use or structure **is** consistent...

S. Miller made a motion to approve the minutes as amended. T. Morgan seconded the motion, which passed with three votes in favor; P. Larochelle and L. LaCourse abstained. (3-0-2)

D. Correspondence: None

VIII. ADJOURNMENT

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

The meeting adjourned at 10:15 p.m. The next regular ZBA meeting will be held on January 8, 2014, at 7:00 p.m. at the Alton Town Hall. Please note that though ZBA meetings are scheduled for the first Thursday of each month, the January, 2015, meeting is the second Thursday in order to accommodate the New Year's Day holiday.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session