

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
January 8, 2015
Approved as amended February 5, 2015**

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:00 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 Laroche, Member
Tim Morgan, Member

Lou LaCourse and Steve Miller, also members of the Zoning Board, were attending a Budget Committee meeting this evening.

III. APPOINTMENT OF ALTERNATE

With only three members present alternates could have been appointed, but at present there are no alternate members to the Zoning Board.

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. Laroche seconded the motion which passed unanimously. (3-0-0)

P. Monzione explained that two continuances may be granted at the request of the applicant; a third request for continuance would require that the applicant begin the process anew. In the case of a three member Board, which does legally constitute a quorum, a continuance would be granted at the request of the applicant without penalty to the applicant. The reason for the "free" continuance would be that cases heard by a three member Board would have to meet all criteria with unanimous support of all three sitting members.

Both applicants with cases being heard this evening chose to go forward with the three-member Board.

VI. NEW APPLICATIONS

Z15-01 Second Frog Realty Trust	Map 21 Lot 29-2	Variance 37 Four Seasons Drive
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Second Frog Realty Trust is requesting a Variance from Article 400 Section 412B.1.b of the Zoning Ordinance to permit a lot with less than 150' of shore frontage. This property is located in the Lakeshore Residential (LR) Zone.

P. Monziona read the case into the record. Attorney Lawrence Smith of Ransmeier and Spellman, and Donald D'Auteuil, Trustee of the Second Frog Realty Trust, came forward to present.

The application was reviewed for completeness. **T. Morgan made a motion to accept the application as complete; P. Larochelle seconded the motion which passed unanimously. (3-0-0)**

Attorney Smith introduced himself and his client, and stated that this application for variance is being made in order to acquire a boundary line adjustment for lots 29-2 and 29-1 on Tax Map 21. The purpose of the adjustment is to convey 30 square feet, including 5 feet of shore frontage, from Lot 29-2 to Lot 29-1. The reason for the adjustment is two-fold; it will resolve an encroachment that currently exists on the southern boundary line of Lot 29-2 because the line currently encroaches on a U-shaped dock located on Lot 29-1, and it will enable Lot 29-1 to come into compliance with shore frontage regulations by the NH DES.

Attorney Smith gave a brief history of the two lots. In 1972, both lots were owned by Mr. Paul Harvey. He used the combined shore frontage of both lots in order to gain approval for the three slip U-shaped dock located on Lot 29-1; NH DES requires a minimum of 150' of shore frontage for this type of dock. Lot 29-2 is currently subject to a signed purchase and sale agreement, contingent on approval for a single finger two slip dock; the current dock has only one slip because DES had previously determined that because the combined shore frontage of the two lots had been used to achieve the dock for lot 29-1, Lot 29-2 would not be able to have a two slip dock.

Given the small amount of land this request conveys, there would be no detrimental affect on the surrounding property values, nor will it alter the characteristics of the area. There will be no injury to the rights of others, and there are no known objections to the proposal. What they are proposing would enable Lot 29-1 to be a legally conforming lot with respect to shore frontage. Lot 29-2, owned by Second Frog Realty Company, would still maintain over 100' of shore frontage. Both lots are currently non-conforming because neither lot has the requisite 150' of shore frontage. If the purpose of the ordinance requiring 150' of frontage is to control growth and development along the lake, this will have no adverse impact on the spirit of the ordinance, and will improve the general welfare because one of the lots will be coming into compliance with the requirement for 150' of frontage. A denial of this request would create no gain to the general public. Both lots are fully developed, and the use will not change. The detriment to Lot 29-2 would be that Second Frog Realty would not be able to go forward with the sale of the property with the current purchaser.

Donald D'Auteuil stated that he has met with a representative of NH DES who told him that no repairs can ever be done on the dock existing on Lot 29-1 because it is out of conformance with the shore frontage requirements. This would put that dock into conformance and allow for repairs; parts of the dock go back to the 1970's, and it is badly in need of repair. This would settle both issues. The

current dock is a wooden crib dock, and the cribs are falling apart. P. Monziona clarified through questioning that it is DES who will not allow the repairs, not the Town of Alton. Mr. D'Auteuil went on to explain that conveyance of the 5 feet of lake frontage would allow Lot 29-1 to be in conformance with DES, and then they would be able to get approval for the dock repairs.

P. Monziona clarified through questioning that the lot line adjustment would give Lot 29-1 the shore frontage it needs to be in conformance with both DES regulations and Town of Alton zoning regulations. Currently Lot 29-2 has 105.7' of lake frontage, and Lot 29-1 has 146.8'. Both lots are currently conforming because they pre-date the zoning regulations. After conveyance, Lot 29-2 would still be in compliance with the zoning regulations in affect at the time it was created, and Lot 29-1 will be in compliance with both DES regulations and Town of Alton Zoning Regulations as they currently stand. Attorney Smith added that this will also allow Lot 29-2 to gain DES approval for a two slip dock; 75' is required by NH DES for the two slip dock. P. Monziona clarified through questioning that the final execution of the purchase and sale agreement for Lot 29-2 is contingent both on approval of the request for variance and on approval by NH DES.

T. Morgan asked if the two lots had been merged by Mr. Harvey when he owned them; according to the applicant, he had not. They were conveyed separately to different owners. T. Morgan asked if the applicant would have to go to the Planning Board for lot line adjustment if the variance is granted; the applicant answered that they would. T. Morgan asked if the lot line adjustment would create a new lot of record; J. Dever answered that it would. P. Monziona went on to state that it would actually create two new lots of record, and only one of the new lots would meet the current zoning regulation for 150' of shore frontage. After the conveyance, Lot 29-1 will have 151.9' and Lot 29-2 will have 100.5' of shore frontage. Lot 29-1 will be in compliance with current zoning regulations, and Lot 29-2 will be in compliance with the 1995 zoning regulations.

T. Morgan asked if the only compliance issue was the shore frontage; J. Dever answered that it is. This is a private road, and the access is very adequate.

The floor was opened to public input; there was none. Public input was closed without any further input from the applicant.

WORKSHEET

P. Monziona stated that the variance **will not** be contrary to the public interest. The end result, if all other approvals are met, will be that Lot 29-1 will be fully in conformity with current Town of Alton regulations as well as the DES requirements for the existing dock, and Lot 29-2 will be in compliance with the Zoning Regulation for lots that existed before 1995, which this lot did. The only reason lots are being formed now is to allow Lot 29-1 to be in compliance, so overall this boundary line adjustment and the creation of two new lots is actually in the public interest. P. Monziona and T. Morgan both agreed.

P. Larochelle stated that the request **is** in harmony with the spirit of the zoning ordinance and the intent of the Master Plan, and with the convenience, health, safety and character of the district within which it is proposed. This is in the spirit of the ordinance. T. Morgan agreed and added that the ordinance has contemplated that sufficient shoreline to protect the people who use the lake, and the shoreline exposure is not changing. P. Monziona agreed for all the reasons he previously stated and also those stated by the other members.

T. Morgan stated that by granting the variance, substantial justice **will be** done; the benefit to the applicant far outweighs any possible detriment to the general public. P. Monziona agreed and added that he feels substantial justice will be done for all of the reasons he previously stated, and that is the end result of what these lots will be, particularly in conformance with DES regulations for the shoreline. P. Larochelle agreed.

P. Monziona stated that the request **will not** diminish the value of surrounding properties; no testimony was given to indicate otherwise nor was any evidence put before the Board that there will be any diminution of value. The change to Lot 29-2 is very slight and is an improvement overall. P. Larochelle and T. Morgan agreed.

P. Larochelle stated that for purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; **no** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; the proposed use **is** a reasonable one. He added that the proposed use is reasonable for making one of the lots conforming with state and town, and this will better both properties. T. Morgan agreed and added that the proposed use is not changing and it remains substantially the same reasonable use, and the general public purpose of the ordinance which is to avoid overcrowding on the lakeshore, and the application to these properties, which will not be changing the use of the lakeshore at all, is an appropriate relationship. P. Monziona agreed and added that the proposed use is reasonable; it is not changing from Lakeshore Residential use, and counsel for the applicant points out well that the reasons for these regulations in the first place and why this variance will not be contrary to those reasons.

T. Morgan made a motion to approve the request for variance in Case Z15-01. P. Larochelle seconded the motion which passed unanimously. (3-0-0)

Z15-02	Map 72/Lot 119	Variance
Muriel Charron and Linda Bimbo		84 Alton Shores Road

On behalf of Muriel Charron and Linda Bimbo, Dan Laurin of Dan Laurin Carpentry LLC is requesting a Variance from Article 300, Section 327A.1 of the Zoning Ordinance to permit razing of the existing home and replacement with the same amount of encroachment into the 30' shore front setback and to allow construction of a shed.

P. Monziona read the case into the record. Dan Laurin of Dan Laurin Carpentry came forward to present. T. Morgan reminded the applicant that the three-member Board would require unanimous approval of each of the specific criteria of the variance. The applicant decided to proceed, as he felt the case was fairly cut and dried.

The application was reviewed for completeness. **P. Larochelle made a motion to accept the application as complete. T. Morgan seconded the motion which passed unanimously. (3-0-0)**

Mr. Laurin stated on behalf of the applicant that it is their intention to demolish the existing home on the property and replace it with a new structure on the existing footprint, with a new foundation. The issue is that they are within the 30' setback for the town, so they are requesting a variance to rebuild where the existing footprint is. They are also looking for a Special Exception for a shed that meets the town requirements for a permit-less structure. J. Dever explained that both requests were rolled into one variance; this was discussed briefly, as both things would have to meet the criteria for the variance to pass. There was also discussion concerning the choice of this variance rather than a Special Exception which would allow for replacement off a dilapidated structure. J. Dever explained that the encroachment is a very small portion of the deck and house. What they are proposing is a slightly different configuration. The structure will be in the same footprint but will increase square footage from about 900 square feet to 1,182 square feet. The encroachment will remain, but will be configured differently. The actual encroachment is approximately 5'. The square footage increase will be possible because the square footage encompassed by the existing deck, which is part of the current footprint, will become included in the living space.

T. Morgan asked if the 30' shore setback also applies to accessory structures; J. Dever explained that it does. Mr. Laurin explained that the shed is being located for convenience to the property and the dock, as it will be used for storage of outdoor tools and boat equipment. Also, the grade from the end of the driveway to the back of the shed is very steep. J. Dever commented that he calculated the overall slope of the lot to be 27%. It was also noted that, the shed aside, there is slightly less encroachment with the new proposal.

P. Monziona asked about the new roofline and whether it is higher than the existing. Mr. Laurin explained that there will be a steeper pitch to the roof; it will go from 4:12 to 10:12. The new structure will be within the 35' height requirement. There will be a walkout basement. The new structure will have the same number of bedrooms as the existing, which is two bedrooms. There will be a new septic with a pre-treatment system which has been approved by the Board of Selectmen and permitted by NH DES. There is also approval from DES for the location of the structure.

P. Monziona referred to the photos of the existing property and commented that a nice, new structure to replace the one that is horrible dilapidated and unsightly. He went on to say that his only issue with this request is the shed, as there is complete reasonable use of the property, as it is intended, even without the shed. There was discussion concerning eliminating the shed from the plan, but the conclusion seemed to be that the shed would lend to a safer, more usable setup, as there could be equipment and gasoline stored in it. Moving the shed back would cause it to be cut into the bank and would create additional expense the applicants are not prepared for. P. Monziona asked if DES had approved the location of the shed; Mr. Laurin explained that DES has approved it because it was included on the overall plan given to DES. J. Dever explained that there is a 50' DES setback from the shore, but they have an exception for accessory structures under 150 square feet.

P. Larochelle asked if there would be any obstruction of the abutters' views; Mr. Laurin explained that the slope of the land and the fact that one of the neighboring properties is the association beach means that there is no obstruction of views.

P. Monziona opened the floor to public input; there was none. Public input was closed. Mr. Laurin concluded his presentation by adding that approval of the variance would allow for a much better structure to replace the existing dilapidated one, and would improve property values in the area.

WORKSHEET

T. Morgan stated that the variance **will not** be contrary to the public interest. What is happening here is the removal of a dilapidated structure and replacement with a properly built structure along the lakefront area. It is not contrary to the public interest. P. Monziona agreed and added that overall it is a complete improvement. He had expressed concern about the shed, but as DES permits these things, even with their strict watch over the lake and surroundings, he does agree. P. Larochelle also 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 thing that is occurring here is that a dilapidated structure on the lake, and that is somewhat of an eyesore and a danger, is going to be torn down and replaced with a new structure that is going to improve the convenience, health, safety and character of the Lakeshore Residential Zone. P. Larochelle and T. Morgan agreed.

P. Larochelle stated that by granting the variance, substantial justice **will be** done; this will make the home safer and increase the value of this property and properties surrounding it. He believes substantial justice will be

done. T. Morgan agreed and added that the value to the applicant outweighs any possible detriment or loss to the general public. P. Monziona agreed.

T. Morgan stated that the request **will not** diminish the value of surrounding properties; there was no evidence with respect to this, but intuitively one would think that improving a structure like this would improve the value of surrounding properties. P. Monziona and P. Larochelle both 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 it is a continued use of the structure that is there presently. It is residential, which is permitted in that zone. The special conditions of the property would be the steep slope of the land and the fact that a shed could not be located appropriately on any other spot. There is no fair and substantial relationship to apply the ordinance provision to prohibit that given its utility and benefit to the property. P. Larochelle agreed. T. Morgan also agreed.

T. Morgan made a motion to grant the variance for Case Z15-02. P. Larochelle seconded the motion which passed unanimously. (3-0-0)

A brief recess was taken at this time.

VII. OTHER BUSINESS

- A. Previous Business: Any member with a term expiring and intention to run again needs to make sure to register. J. Dever will find out if anyone needs to register for the March election.
- B. New Business: Request for rehearing on Case Z14-28. There was discussion concerning whether an abutter has standing to request a rehearing, particularly as this abutter was noticed but did not attend the hearing. J. Dever is meeting with counsel and will ask the question. Timing of hearing the request was also discussed; the request for rehearing must be submitted within 30 days, and that the request has to be acted upon at the next regular meeting. The request was submitted timely; the Board decided to continue the request pending advice of counsel as to whether the abutter has standing to request the rehearing.

T. Morgan made a motion with respect to Case Z14-28 and 29 Request for Rehearing to continue to the February meeting of the Board in order to gain input from Town Counsel as to the standing of abutter to request a rehearing. P. Larochelle seconded the motion which passed unanimously. (3-0-0)

P. Monziona also stated that this continuance will also allow for input from the other Board members on this matter.

- C. Minutes: December 4, 2014 – On page 4, first full paragraph, fifth line down, “will not apply” is repeated, so the repetition should be removed. Also on page 4, the last long paragraph before the worksheet, fourth line from the bottom, the ending “s” should be removed from the word “estoppels” making it “estoppel”. On page 7, the last paragraph before the worksheet, “p. Monziona” should be P. Monziona”. On page 8, the last paragraph of the worksheet, last line should read “L. LaCourse disagreed *with S. Miller* for all the reasons given by P. Monziona.” On page 12, reference to the “Warner” property should be “Werner”. On page 13, the large paragraph about center of the page, fourth line “wit” should be “with”.

P. Larochelle made a motion to approve the minutes as amended. T. Morgan seconded the motion, which passed unanimously. (3-0-0)

D. Correspondence: None

VIII. ADJOURNMENT

P. Larochelle made a motion to adjourn; the motion was seconded by T. Morgan and passed unanimously. (3-0-0)

The meeting adjourned at 8:25 p.m. The next regular ZBA meeting will be held on February 5, 2015, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session