TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES - APPROVED
February 1, 2018, 6:00 P.M.

CALL TO ORDER

Steve Miller called the meeting to order at 5:56 P.M.

Board Members Present:
Steve Miller, Chairman
Paul LaRochelle, Vice-Chairman
Lou LaCourse, Clerk
Paul Monzione, Member
Tim Morgan, Member

Others Present:
John Dever, III, Code Official
Jessica A. Call, Recording Secretary

APPOINTMENT OF ALTERNATES

Steve Miller noted that no alternates were present, which was not a problem because a full Board was present.

STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning 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 have been or will be met.

APPROVAL OF AGENDA:

Steve Miller stated that Paul Monzione would have to leave the meeting early for personal reasons; therefore, he suggested putting off Case #Z18-01 and to hear Cases #Z18-02 and Z18-03 first. Paul Monzione suggested to Steve Miller that he ask the parties of Case #Z18-01 how long they thought their testimony might last. Steve Miller asked Francis X. Bruton, III, Esq., agent for Colchester Properties, LLC, and James Sessler, Esq., Town Counsel, agent for the Alton Board of Selectmen, how long they thought they would need for their testimony; both parties stated about a half an hour to 45 minutes. Steve Miller withdrew his proposal to put off Case #Z18-01 because he thought there would not be enough time to hear the cases before Paul Monzione needed to leave.

Paul Monzione moved to accept the agenda as presented.
Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

DISCUSSION:

Steve Miller announced a short 10-minute recess so the Board could have a discussion with Shawn Tanguay, Esq., agent for the Zoning Board of Adjustment. Steve Miller called the hearing to order at 6:21 p.m.

APPLICATIONS CONTINUED FROM JANUARY 4, 2018

Case #Z18-01 **Francis X. Bruton, III, Esq.,** **Bruton & Berube, PLLC, Agent for** **Colchester Properties, LLC**	**21 Silver Cascade Way** **Map 39 Lot 11**	**Administrative Appeal** **Lakeshore Residential (LR)**

Present were Francis X. Bruton, III, Esq., agent for Colchester Properties, LLC; Wayne Capolupo, manager of Colchester Properties, LLC; Phillip J. Stiles, Esq., witness; Henry H. Boyd, Jr., LLS; surveyor; James Sessler, Esq., Town Counsel, agent for the Alton Board of Selectmen; Tom Sargent, Town Assessor; and Shawn Tanguay, Esq., agent for the Alton Zoning Board of Adjustment.

Steve Miller read the public notice for the record.

James Sessler, Esq., stated that he was asked by the Board of Selectmen to represent them in regards to a decision that the Selectmen made to not unmerge Map 39 Lots 10, 11, 12, 110 and 111. RSA 674:39-aa required municipalities to unmerge any lots that were involuntarily merged prior to September 18, 2010, for either zoning, assessing, or taxing purposes. He further noted that with this restoration, an owner was not entitled to the restoration of lots if any owner in the chain of title voluntarily merged their lots.

James Sessler, Esq., shared with the Board that one of the earliest cases, Robillard vs. Town of Hudson, which the Supreme Court heard in regards to an unmerger/merger was in the 1980's, and was case law that the Town of Alton followed. He also referred to two recent cases, Town of Newbury vs. Steven P. Landrigan and Charles A. Roberts vs. Town of Windham. In these cases, the Court had examined various actions, covert, overt or otherwise, by owners to determine whether or not lots had been previously merged. These cases showed factual actions by an owner that constituted a voluntary merger took place. Some of the facts presented were that lots were described as one lot by specific unambiguous metes and bounds and deeds or other forms of conveyances; abandoning internal lot lines on recorded plans; developing the property in question as one estate where primary buildings, physical characteristics of the buildings of the land, access ways, utilities, septic systems, walkways, driveways, and outbuildings where accessory buildings crossed lot lines and were configured so that one lot was reasonably presumed by any reasonable person looking at them; holding the lot line out as one lot for regulatory permits; and acquiescence to taxation as a single lot.

The description of lots in a deed does not show what had taken place, and was not the sole determining factor to show if a merger had taken place. James Sessler, Esq., passed out an evidence packet to the Board. In that packet, he provided copies of previous deeds, plans, and permits. He wanted to pay particular attention to the deed from Cochecho Associates, Inc., to Robert & Patricia Matt, dated October 16, 1961. In the section of the deed that described what was being conveyed, the deed read, "a certain tract or parcel of land, with the buildings thereon,". James Sessler, Esq., wanted to make note how important that was because it signified a single lot, not plural. The deed further described the lot being conveyed as "known as Lots Nos. 10, 11, 12, 110, and 111 on "Plan of Lots, Center Section…"." The deed further described the metes and bounds and those measurements only referred to one lot.

The developer created three (3) plans for this development, a North Section and a South Section were both

recorded on April 20, 1960, and a Center Section plan, which was the focus of this hearing, was recorded at a later date. At the time of recording the North and South plans, the developer also recorded a document entitled "Restrictive Covenants Relative to Cascade Terrace Development, Alton Bay, NH", which only applied to the North and the South sections of the development. These Covenants created a residential development with no commercial or manufacturing activity allowed, and had to have a residential home with outbuildings such as bunkhouses, boathouses, garages, sheds or other outbuildings. The deed from Cochecho Associates, Inc. to the Matt's, showed that the lot being conveyed was subject to the Restrictive Covenants, except for sections 3, 4, 5, and 6, because it was already a developed lot with a residential use. James Sessler, Esq., thought that the deed from Cochecho Associates, Inc. to the Matt's resembled the Town of Newbury vs. Steven P. Landrigan case because the lots were described by specific unambiguous metes and bounds described in the deed.

James Sessler, Esq., asked the Board to follow the metes and bounds from Cochecho Associates, Inc.'s deed and compare it to the "Plan of Lots Center Section Cascade Terrace" plan, dated September 25, 1961. There was a house, shed, and a garage on Lot 11, a boathouse on Lot 12, and two (2) garages on Lot 111. The plan also indicated that there was a right-of-way that led to a parking area and a garage that went with the house.

James Sessler, Esq., shared that he had been an attorney since 1977 and had represented municipalities, looked at plans from private developers and towns, performed conveyances for banks, and had appeared before Planning Boards since that date.

James Sessler, Esq., pointed out that the lot lines for Lots 10, 11, 12, 110, and 111 were shown as dashed lines, when the perimeter lines were shown as solid heavy unbroken lines. The dash-lined lots did not have any metes and bounds, where all the other lots indicated on the plan did. In his experience, he explained that dashed lines on a plan were different than a boundary line; a boundary line was generally listed as a solid line, and dashed lines were generally used as either setback lines, a building envelope line, an abandoned line, or a lot line adjustment. James Sessler, Esq., talked to the Alton Town Planner, Nic Strong, prior to this hearing, and she agreed with him on what the dashed lines indicated. He stated that when looking at the whole development and determining if a merger took place or not, the Supreme Court looked at the primary buildings and whether or not they all worked as one estate. This was addressed in the Charles A. Roberts vs. Town of Windham case where the Court deemed it as a "waterfront estate", and that determination also appeared to have taken place with Colchester Properties, LLC. Steve Miller asked when drawing up a plan to what a dashed line meant and what a solid line meant was there a standard definition that a surveyor used. James Sessler, Esq., stated that other than talking to surveyors, he looked through several text books and did not find anything definite; it was just the way things were usually documented. Steve Miller asked if there was an evolution in plan drawing in the last 55 years, and would a plan drawn up then look the same as it would today. James Sessler, Esq., stated probably not because the measurements were different now that surveyors used GPS, but the basic symbols stayed pretty much the same. He referenced Town of Newbury vs. Steven P. Landrigan where the Superior court deemed a dashed line an abandoned line.

Paul Monzione asked if the Town had factual evidence if the two (2) garages located on Lot 111 were used by the estate. Tim Morgan asked who commissioned the "Plan of Lots Center Section" survey, and was it drawn up in preparation of the deed from Cochecho Associates, Inc., to the Matt's. James Sessler, Esq., thought it was initiated by Cochecho Associates, Inc.

James Sessler, Esq., referred the Board to another plan entitled "Plan of Land", dated May 11, 2016. This plan showed the boathouse, but was now referred to as an "existing dwelling", the garage that was partially underground, the paved driveway, the right-of-way coming into the property, and it showed the two (2) garages near Lot 111, now indicated as sheds. The last aerial photograph taken of that area was in May of 1971, and sometime after that, the cottage burned down, but the foundation was still there. There were indicators that the

lot was going to be one common estate and not separate lots. The driveway into the two (2) garages/sheds crossed property lines onto Lot 110. The layout of this lot looked the way it did because if you looked at the topography of the lot, it was extremely steep from the Route 28A side and sloped down to the west towards the lake. The two (2) garages/sheds at the top were positioned there because that was the most reasonable place to build back in the 1960's. Another indicator was there were two pillars at the beginning of the driveway off Route 28A, which looked like they once belonged to a gate. Furthermore, the plan showed a gravel path that came from the former location of the cottage, up to the hill, and then to the roadway, which ended up where the two (2) garages/sheds were located. This incorporated common elements into the lots and tied the lots that led down to the original cottage. At the end of the gravel path towards the water's edge, there was a stairway that led to the concrete pad.

Paul LaRochelle asked where the septic system and well were located because he could not identify either one on the plan. James Sessler, Esq., stated that the Town was unaware where the septic system was located, and he thought that the owners might have drawn their water from the lake. He noted that on the other side of the cottage there was a stairway that led to another concrete pad and that pad led down to the boathouse. The boathouse was referred to as a boathouse in 1971 and in 1985, but was now shown as an "existing dwelling" on the May 11, 2016, plan. Steve Miller asked if the boathouse/existing dwelling was over the water. James Sessler, Esq., stated that it was over the water, it was permitted, and appeared to be legal. The boathouse/existing dwelling did have living facilities in it. Steve Miller asked if there was an opening in the boathouse/existing dwelling where a boat could be driven into it; James Sessler, Esq., stated, yes, on the left-hand side.

James Sessler, Esq., noted that along the lakeside of the right-of-way, there were symbols for rock walls, which extended from the stairway off the house, southerly to the boundary of the east boundary of Lot 112. The wall was all one common architectural element, built with the same materials, with no breaks in the wall, and appeared to be one continuous estate. There was also another rock wall on the south westerly corner of the garage that was partially underground, which crossed the boundary between Lot 12 and Lot 11; this was also one common architectural element. The two (2) pillars on Route 28A had the same architectural element as the rock wall. Steve Miller asked if the rock wall had a utility use by holding back the ground, or was it for decorative purposes. James Sessler, Esq., stated that it was holding back the ground because it was an extremely steep piece of property.

James Sessler, Esq., noted that there were electrical lines that ran from across the street on Route 28A, through the center of Lot 111, down to Lot 11 to accommodate the boathouse/existing dwelling, which was actually located on Lot 12. Steve Miller wanted to know if the garages/sheds had electricity; James Sessler, Esq., stated that he was unsure if it did at one time.

James Sessler, Esq., went over the photographs that were in his evidence packet. The first photograph showed the partial underground garage and the curved retaining wall, and where the boundary between Lot 11 and Lot 12 would be was to the right side of the garage. The second photograph showed the steepness of the lot, east of the right-of-way. The third photograph was of the stairway at the location of the cottage that went down to the boathouse. To the Town's knowledge there was no other stairway available to access the boathouse, which was common when converting property into a waterfront estate. Steve Miller pointed out that the actual concrete pathway crossed over the dashed boundary lines; James Sessler, Esq., agreed. The fourth photograph showed the retaining wall near the cottage and showed the steepness of the lot. James Sessler, Esq., shared that back in the 1960's, Lot 10 would have been difficult to access from Route 28A because it was extremely steep, and the only reasonable way to access Lot 10 would have been off the right-of-way. When the Center Section was created, the cottage blocked the extension of the right-of-way to access Lot 10 because that was the only area flat enough to build the cottage; this showed another intent to make this lot one waterfront estate. The fifth

photograph showed some steps where the cottage location led to the path, which led to the driveway and garages/sheds on the upper end of the lot. The sixth photograph showed the stairway and where the cottage was located. The seventh photograph showed the pathway, which was easy to see and was walkable. The eighth photograph showed more details of the pathway going up the hill. The ninth photograph was the top of the pathway after you walked past the lower garage/shed, on your way up to the driveway. The tenth photograph showed the pathway as it reached the top, next to the driveway. The eleventh photograph showed the steepness of the slope. The twelfth photograph showed the driveway that came in from Route 28A, curved into Lot 111 and circled back down to the garage/shed. The thirteenth photograph showed the two gate pillars, which at one point had gate pins but were now rusted out, located at the beginning of the driveway off Route 28A. The fourteenth photograph showed the power lines extending over the lot. The fifteenth photograph showed the power lines going down into the property, which were still in use. The sixteenth photograph showed the lower portion of the driveway going down to the lower garage/shed. The seventeenth photograph showed the lower garage/shed. The eighteenth photograph showed the corner of the garage/shed focused down towards the lake, showing the steepness of the slope. The nineteenth and last photograph showed the pathway heading towards the cottage, looking down from the driveway.

James Sessler, Esq., stated that in 1970, New Hampshire Legislature passed a law requiring all municipalities in New Hampshire to produce comprehensive tax maps for the entire town. Part of this process involved performing an aerial survey. The company that the Town hired took the aerial photograph and laid out all of the deeds, subdivision plans, and everything else they could find over the property to locate where the property lines were. This aerial photograph showed the property when it was owned by the Matt's and it showed the cottage with the interior lines being dashed and the outer boundary lines were solid. At that time, the developer included Lot 112 into the equation, but the Board of Selectmen agreed to unmerge that lot. If this appeal went any further, the Town would most likely reopen that issue, because the Town had found additional evidence showing that they should have not unmerged Lot 112. When looking at the aerial photograph, there was a large area that showed a lawn that would be associated with a waterfront estate. Steve Miller asked if the Town accepted the north boundary line of Lot 112, which was dashed, as a legitimate boundary line to exclude. James Sessler, Esq., stated that originally, the southerly boundary line was indicated on the 1961 plan as a solid line.

James Sessler, Esq., referred to Robillard vs. Town of Hudson and Town of Newbury vs. Steven P. Landrigan. If a prior owner represented the lots at any time as one lot for regulatory purposes, they could not deny the lots were not one lot. In 1995, an application was submitted to DES for a wetlands permit to repair the waterfront on the lot. In that application there were two plans, one plan was a schematic of where the proposed rip-rap was going to be installed. This schematic also showed the waterfront with dimensions of 132' to the south, 62' for the boathouse front, 75' for the rip-rap area, and 200' extending to the north, which did not correspond to the frontage along the waterfront if the lots were separate lots, but it did correspond if you included Lot 112, 12, 11, and 10. Another plan that was submitted with the wetlands application was a schematic that Mr. Matt provided that showed Lot 11 as one lot with waterfront frontage of 475'.

James Sessler, Esq., shared another application that Mr. Matt submitted, this one was for an Electrical Permit to the Building Department requesting to move an electric meter from a temporary pole next to the boathouse on Lot 12 to an existing telephone pole 15' from the boathouse, which was on Lot 11. The electric lines were run underground, and usually they do not go underground on one lot to service a meter located onto another lot.

James Sessler, Esq., shared a final document from the Alton Assessing Department, which would pertain to the acquiescence of taxation as a single lot. Although the Supreme Court had determined that acquiescence to taxation alone was not sufficient to deem a merger, it was something that had to be looked at. In 2005, Mr. Matt spoke to Tom Sargent, Town Assessor, and argued that the upper steep land alongside Route 28A should be discounted to lower his value, and Tom Sargent agreed. Mr. Matt took into consideration all of the property to

propose an assessment. Steve Miller asked Tom Sargent if, hypothetically, there were two separate lots and one lot belonged to you, could you ask for an assessment on your lot because the other lot decreased the value of your lot. Tom Sargent stated the owner would have to show some proof of detrimental value and he would go out and look at the property. He said when he met with Mr. Matt he would have made notes about the separate lots, because he made notes about other issues.

James Sessler, Esq., stated that to properly decide on this case, the Board would have to take into consideration all of the facts that he presented. Tim Morgan asked what the burden of proof was. James Sessler, Esq., stated that the burden was presenting the facts beyond a reasonable doubt. Steve Miller asked if James Sessler, Esq., was sure the ZBA had the proper jurisdiction to hear this appeal. James Sessler, Esq., stated that it appeared that the legislature had given the ZBA the job of hearing cases such as this.

F. X. Bruton, III, Esq., thought it was odd by looking at the tax map that the lot in question was twice as large as the other lots in the area. He did not think there was a good reason why the lots should not have been considered unmerged, and he was going to share why he thought the lots were in fact subdivided in 1961. F.X. Bruton, III, Esq., was a land use attorney who had been practicing law for the past 28 years. He appeared before Zoning Boards all the time and never had to go for an unmerger case before.

F. X. Bruton, III, Esq., referred to Robillard vs. Town of Hudson, Charles A. Roberts vs. Town of Windham, and Town of Newbury vs. Steven P. Landrigan. He shared that in Charles A. Roberts vs. Town of Windham, the Supreme Court was specific in saying that "…one tract in a single deed does not, standing alone, support a finding of voluntary merger...". In the Charles A. Roberts vs. Town of Windham and Town of Newbury vs. Steven P. Landrigan cases, where there was a deed or plan of lots that was on record, what occurred was an overt act that created a merger of the lots. After a subdivision was approved, one of the overt acts was the owner had created a garage a couple of inches away from the lot line, but pointing only to the other lot and could not be accessed by anyone on the first lot. The Courts deemed it an overt act because it overlapped the property lines. There was also a cottage built that straddled the property line, which was considered an overt act. Another issue was the Court looked at a bunkhouse on a lot and considered it ancillary to the use of a primary structure located on another lot, because the bunkhouse only had beds and was not self-sustaining.

F. X. Bruton, III, Esq., referred to Town of Newbury vs. Steven P. Landrigan. This case dealt with the context of the statute. There was an original conveyance of two lots in 1934, and they referred to dashed lines on the plan. When the applicant applied for a building permit they did not indicate there were two lots in order to meet setbacks. In 2006, the same applicant submitted a plan on record that showed a dashed line, but made a notation of an "old line". Steve Miller asked if the boathouse/existing dwelling was not labeled as a boathouse and was labeled as a mother-in-law apartment, would that be an overt act? F.X. Bruton, III, Esq., stated that the distinction was that the lots were created in 1961 showing all the uses, prior to the subdivision. He thought it was clear that the developer was creating a subdivision with the structures in place, and intended to subdivide the parcels, therefore, he thought that no overt act occurred. Paul Monzione needed some clarification and asked that since the 1961 recordation of the 1960 plan, an owner of the property applied for and obtained subdivision approval creating all the separate lots. F. X. Bruton, III, Esq., stated, no, at the Board of Selectmen hearing, he noted that Liz Dionne, Town Administrator, stated that back in 1961 Alton did not have any subdivision regulations. F. X. Bruton, III, Esq., stated that what property owners used to do was file a Plan of Lots, which was what created a subdivision. He shared that the owners of Colchester Properties, LLC, did not perform any overt acts. F. X. Bruton, III, Esq., stated that the owners of Lot 11 created those dashed lines because they eventually wanted to separate the lots, and when they presented the plan to the Town, the Town accepted that plan and noted it on their tax maps, which still existed today, and the only problem was there was only one tax card. Steve Miller asked if each lot had their own 911 addresses, or was it just one address; F. X. Bruton, III, Esq., stated, one address. Lou LaCourse asked if any of the lots were individually taxed; F. X.

Bruton, III, Esq., stated, no. Paul Monzione asked if the plan from 1960 included all of the lots depicted on the Center Section plan, or did it just depict the lots within Lot 11. F. X. Bruton, III, Esq., stated that there were other plans recorded to depict the other lots and the "Plan of Lots" was created to depict the Center Section of lots. Paul Monzione asked what created these lots in the first place and how did they come into existence to begin with. F. X. Bruton, III, Esq., stated the way it was done in 1961 was you would put a plan on record at the Registry of Deeds and that recordation created those lots. Paul Monzione asked if Lot 11 was one parcel. F. X. Bruton, III, Esq., stated it was conveyed to Cochecho Associates, Inc., as one parcel. Paul Monzione asked after Cochecho Associates, Inc., had it as one parcel, they then had a surveyor draw up a plan depicting Lots 12, 11, 10, 112, 111, and 110, as depicted on the Plan of Lots. Shortly after that plan was drawn up, Cochecho Associates, Inc., conveyed Lot 112 to the Matt's. Sometime after they sold Lot 112, they sold the other lots to the Matt's. Paul Monzione mentioned that Lot 11 was all one lot that encompassed all of the structures prior to the subdivision. He noted that the point F. X. Bruton, III, Esq., was making was there was no overt act the owner engaged in that would indicate a cohesive use of those lots as one.

Steve Miller asked if a family used to live in the cottage; F. X. Bruton, III, Esq., stated, yes. Steve Miller asked if that family had use of the boathouse/existing dwelling. F. X. Bruton, III, Esq., did not have an answer for that, but mentioned that if they did have use of the boathouse/existing dwelling, they owned two lots and two structures. Steve Miller asked if that family was responsible for the electricity going to the boathouse. F. X. Bruton, III, Esq., wasn't sure, but noted that one family could own two separate parcels. Steve Miller asked if that family had use of the garage. F. X. Bruton, III, Esq., understood that the garage was used with the house on Lot 11. Steve Miller asked if that family had use of the two (2) garages/sheds. F. X. Bruton, III, Esq., stated that he did not know and if they did, it would not affect his argument, and those would be accessed off Route 28A. Steve Miller asked if that family had sole discretion on who entered the gated area on Route 28A; F. X. Bruton, III, Esq., did not have any evidence of that. Steve Miller asked if there was such a gate there at one time because he thought there was some evidence provided earlier in the hearing that proved the pillars had metal pins as one point. Lou LaCourse asked if there was any indication that people lived in the boathouse/existing dwelling prior to the main house burning down, or did that family make changes to the boathouse/existing dwelling after their cottage burned down instead of rebuilding. F. X. Bruton, III, Esq., did not have any evidence of such. Paul LaRochelle asked in 1961 when there was a proposal to subdivide, was the intent of Lot 10, 110, 111, and 112 to be accessed from Route 28A. F. X. Bruton, III, Esq., stated, yes, because when he handled subdivisions he saw shared driveways. He noted that the dashed lines meant common ownership and when lots were sold, the dashed line turned into a solid line and that was when reference was made to metes and bounds.

Steve Miller asked when the last time someone lived on that property either seasonal or on a permanent basis. F. X. Bruton, III, Esq., stated that the prior owner lived in the boathouse/existing dwelling for about 10-15 years before Colchester Properties, LLC, purchased the property in 2016. Paul LaRochelle asked if there were people living there, how could they not know there the septic system was. Wayne Capolupo stated that the septic system was 20' off the lake and about 10-15' south of the boathouse/existing dwelling on Lot 12. Steve Miller asked what the capacity of the septic system was. Wayne Capolupo thought it was a 500 gallon concrete tank, but he was not sure how big the leach field was because they have not had to expose it since he purchased the property. Paul La Rochelle asked what their intent was in regards to the boathouse, and were they going to build another structure on Lot 12 on the opposite side of the right-of-way; Wayne Capolupo stated, no.

F. X. Bruton, III, Esq., addressed the wetlands permit and thought that the reason why Mr. Matt included the frontage as a whole as compared to frontage on each lot was because he was working on the shore, which was off the property. Next he addressed the electrical permit, and stated that anyone could run a line and have that service be used by other people when they purchased the other lots. F. X. Bruton, III, Esq., also addressed the discussion Mr. Matt had with Tom Sargent about assessing the value of his property. He thought because the

only way Mr. Matt could refer to his property was Tax Map 11, and because he only had one tax bill, that's how he portrayed it to the Assessor.

Phillip J. Stiles, Esq., had been working with real estate and reading plans since admitted to the Bar since 1979. When he looked at the "Plan of Lots" for Cascade Terrace, he saw a clear intent to create lots, because they were delineated with dashed lines and they were numbered. The reason there were no metes and bounds was because at the time the plan was created, they were owned by the same person. What Phillip J. Stiles, Esq., wanted to point out was when you looked at the Town's tax map, it showed the dashed lines. He also shared that when he looked at the tax map, the deeds, and the plan, he thought that the lots were created in 1961 and they remained lots as of today. Steve Miller mentioned the tax map had an indication that made the Town believe they were individual lots; Phillip J. Stiles, Esq., stated, yes. Steve Miller then referred to the tax card that showed the square footage to include all the lots, and asked that if the Town accepted the indication on the tax map, why not take the indication on the tax card that it was one lot as a contrary indication that it was really one parcel. Phillip J. Stiles, Esq., referred to the Charles A. Roberts vs. Town of Windham case where the Court determined that you could not base the method of how the Town taxed their land was not dispositive in determining zoning questions. This made recognition that it could be taxed as one large lot and yet still unmerge lots within that large lot. Steve Miller asked when his client saw that the lots were the way they were, why did they not address it earlier. Phillip J. Stiles, Esq., stated that Colchester Properties, LLC, was a fairly new owner and was addressing it now. Steve Miller asked if a prior owner had any impression that the property was only one lot; F. X. Bruton, III, Esq., stated that this was a fairly new statute that allowed owners to request an unmerger, so he was not sure if the prior owner was even aware.

Steve Miller asked F. X. Bruton, III, Esq., if he agreed with James Sessler, Esq., that the ZBA had jurisdiction to hear this case; F. X. Bruton, III, Esq., did agree this was the right forum. Steve Miller asked F. X. Bruton, III, Esq., if he thought this case was based on fact or just law. F. X. Bruton, III, Esq., stated it was based on fact and law because it involved a statute that had to be interpreted, and you could not separate the two.

Paul Monzione asked if this was a standard of review whereby the Board should make a determination that no reasonable Board of Selectmen could make it binding. He was wondering if the Selectmen had sufficient evidence to reach the conclusion they reached. Shawn Tanguay, Esq., stated it was a de novo hearing. He noted that the landowner had to go before the Board of Selectmen with their presentation, and the Board of Selectmen served as a quasi-judicial body in a sense, then they would become a party to the next proceeding, which was the Zoning Board of Adjustment. The Town had the burden of proof to establish that this was in fact merged by a landowner in a chain of title.

Henry Boyd Jr., LLS, Millennium Engineering, Inc. discussed dashed lines with the Board. He noted that unlike James Sessler, Esq., he had seen dashed lines indicated on subdivision plans in the past, although he personally did not use them. He referred to the 1961 Center Section plan and pointed out that at the time of the survey, there were no surveyors in New Hampshire by licensure; therefore, there was no seal or signature. The plan in question was technically a subdivision plan, and as the plan of lots suggested, it showed the creation of individual lots. As a land surveyor, he had to have a good working knowledge of land law for the State of New Hampshire and when he was presented with this plan, he could not see how anyone else could not see that there was some intent to show a division of that greater parcel; if the owners did not intend to separate the lot, then why were the dashed lines and lot numbers put in place. Henry Boyd, Jr., LLS, stated that it was his job to retrace the footsteps of previous surveyors, and when he was on site, he found some of the steel stakes and the highway boundary and they matched the plan. He noted that the intent to separate the lots must have been an option because when he measured out each lot, they matched the dashed lines indicated on the plan. A person could not have an easement over their own property, and because it was common ownership and utility lines had been installed underground crossing lot lines, it did not make a difference. When the lots got sold, proper

easements would be executed. When referring to the driveway, the lot line was centered on a draw in the contour in order to make Lot 110 and Lot 111 accessible. Steve Miller asked how many stakes Henry Boyd, Jr., LLS, found; he stated that he found the outer perimeter stakes. Steve wanted to know if the stakes that were found were indicative of what would be found in the 1960's; Henry Boyd, Jr., stated that there was no requirement at that time to use the same materials for boundary markers. Lou LaCourse asked if they found any stakes that delineated the individual lots; Henry Boyd, Jr., LLS, stated, no. He was unsure whether there were stakes there or not because the terrain was congested. Steve Miller asked whether they looked for stakes for the lots that were depicted in the plan; Henry Boyd, Jr., LLS, stated that he did not because he was looking for the recorded monuments that were shown on the plan. Steve Miller noted that the applicant was here to show that there were individual lots and asked why they would not try to prove that. Henry Boyd, Jr., LLS, stated because he could tie into a subdivision without finding every lot line within the subdivision. Steve Miller noted that would be good hard proof that there was an intent to subdivide the lots.

James Sessler, Esq., wanted to answer a question that Paul Monzione had earlier and if you looked at the original 1961 Center Section plan, you would see where it stated South Section/Center Section and North Section/Center Section, which was a division line. If you followed the division line, that Center Section included Lots 9, 10, 11, 12, 110, 111, 112, and 113.

Henry Boyd, Jr., LLS, mentioned that he had seen several plans without metes and bounds throughout his career. F. X. Bruton, III, Esq., added that a deed generally would be held sufficiently definitive, if it was possible by any reasonable rules of construction to ascertain from the description aided by extrinsic evidence, what property was intended to be conveyed. He thought that the evidence provided by Henry Boyd, Jr., LLS, suggested clearly that there was sufficient evidence to define the lots in the initial plan and as they were depicted today.

Steve Miller inquired about public input. Both attorneys stated that was not necessary.

Paul Monzione had to excuse himself from the hearing at 8:39 p.m., for personal reasons.

The Board took a five (5) minute recess at 8:39 p.m. to consult with their Counsel, Shawn Tanguay, Esq.

Steve Miller reconvened the hearing at 8:54 p.m.

> **Tim Morgan moved to continue this matter in order to conduct a site walk on the property, which would be held on Saturday, February 10, 2018, starting at 9:00 a.m. He also moved to continue the hearing to a date certain of Thursday, March 1, 2018, in order to discuss the outcome of the site walk.**
> **Paul LaRochelle seconded.**

DISCUSSION:

James Sessler, Esq., inquired about whether the Board would be taking testimony or allowing any evidence at the site walk. Steve Miller stated they did not answer any questions from either party while conducting site walks, and if people did have questions, they would be addressed at the continued hearing date.

Francis X. Bruton, III, Esq., suggested to change the scheduled meeting date because that was the same week children had school vacation. Steve Miller stated that the Board was already holding a special meeting for the site walk. Francis X. Bruton, III, Esq., decided to schedule the hearing for March 1, 2018, and if he was unavailable at that time, he would request a continuance for April 5, 2018. Steve Miller stated that the Board

would be accepting public input at the continued hearing, because they had received some emails from abutters who lived out of state.

Steve Miller asked the Board for a vote, motion PASSED by a vote of (4-0-0).

Case #Z18-02 **Thomas W. Varney, P.E., Agent for** **Keith & Melissa Watson**	**128 Hamwoods Road** **Map 2 Lot 29-6**	**Special Exception** **Rural (RU)**

Present were Thomas W. Varney, P.E., agent, and Keith & Melissa Watson, owners.

Steve Miller read the public notice for the record.

Tim Morgan moved to accept application #Z18-02 as complete.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

Thomas W. Varney, P.E., stated that the property had an existing house where the Watson's currently lived, and they would like to convert the building into a daycare center. If this special exception was approved, they would move to another home, but would be available for maintenance. Childcare would be for infants, toddlers, pre-school, kindergarten, and school-aged children. There would be up to three (3) full-time and one (1) part-time staff members. Children would be dropped off in the morning and picked up in the afternoon.

Steve Miller asked if the maximum capacity was 25 children; Keith Watson stated, yes. Steve Miller asked about the driveway and what did the typical drop off and pick up look like. Keith Watson stated they had a fairly large-sized driveway that could accommodate about 8 vehicles, and there was a turnaround area in front of the house where parents could back up and drive out of the driveway facing forward. Drop off and pick up times would vary, so it would not be a mad rush all at once. Steve Miller asked if there would be a need for people to park on the street; Keith Watson stated, no.

Paul LaRochelle asked how many adults would be there daily. Melissa Watson stated it would depend upon what the ages of the children were because each age group required a specific number of adults caring for the children. Lou LaCourse asked if the house had a drilled well and did it have enough capacity for 25 people; Thomas W. Varney, P.E., stated yes. Lou LaCourse inquired about the septic system. Thomas W. Varney, P.E., stated that they did not have to install a larger system. Thomas W. Varney, P.E., stated there was a chart showing how much water teachers and students would use; therefore, he found that no changes needed to be made.

Paul LaRochelle asked if there was any fencing around the property or play areas. Keith Watson stated that they would be installing a fence and would discuss that with the Planning Board. Lou LaCourse asked about hours of operation. Melissa Watson stated 7:30 a.m.-5:30/6:00 p.m., but there could be early/late hours depending upon what the hours were that parents worked.

Thomas W. Varney, P.E., read the application for the record.

Steve Miller opened public input. No public input. Steve Miller closed public input.

Steve Miller moved the Board onto the worksheet.

Lou LaCourse stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B.
All Board Members agreed.

Steve Miller stated that the specific site **is** an appropriate location for the use. He stated it was in a rural district and thought there would be several children in the area that would need care.
All Board Members agreed.

Paul LaRochelle stated that factual evidence **is not** found that the property values in the district would be reduced due to incompatible land uses. He thought there would be no impact because it was a daytime facility use only.
All Board Members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. He pointed out that there was no input from abutters.
All Board Members agreed.

Lou LaCourse stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. Tim Morgan thought this would also be addressed by the Planning Board.
All Board Members agreed.

Steve Miller stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated this was validated by the narrative and there would be adequate utilities. Tim Morgan stated it would be monitored by state agencies as well.
All Board Members agreed.

Paul LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that an approved state septic system had been granted. Tim Morgan agreed, and mentioned that Thomas W. Varney, P.E., testified with respect to that criteria.
All Board Members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated as Thomas W. Varney, P.E., pointed out it was an important service to the community, and Tim Morgan thought the Board should be supportive of it. Lou LaCourse stated if the use changed, it would go back to being a house.
All Board Members agreed.

Tim Morgan moved to grant the Special Exception for Case #Z18-02.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

Case #Z18-03 **Randy Joyner**	**126 Edgerly Road** **Map 19 Lot 43**	**Special Exception** **Rural (RU)**

Present was Randy Joyner, Owner.

Steve Miller read the public notice for the record.

Tim Morgan moved to accept application #Z18-03 as complete.
Paul LaRochelle seconded. Motion PASSED by a vote of (4-0-0).

Randy Joyner stated he was building a barn, which was within the 35' height requirement, and by adding the cupola it would allow for air to flow through the hay located on the second floor. Aesthetically, he thought it would fit into the neighborhood. He shared that his barn was three quarters (3/4) of a mile back into the woods. He talked to his abutters and they all seemed to like the idea. Steve Miller asked exactly what the barn would be used for. Randy Joyner stated it would be used for his agricultural purposes only. Steve Miller asked if any of his neighbors could see the cupola; Randy Joyner stated, no they could not. Steve Miller asked if there were any unoccupied lots between any of his neighbors and the cupola; Randy Joyner stated, no. The Hammonds, an abutter, had 450 acres of property; Priscilla Lawrence, an abutter, had 150 acres; and there were abutters who were tree growers that had somewhere between 2,000-3,000 acres, so Randy Joyner was pretty much in the woods.

John Dever, III, made note that in order to access Mr. Joyner's property, you would have to get there from New Durham. Randy Joyner shared with the Board that he was the only property on Edgerly Road in Alton, which he had been maintaining the private road for the past 18 years. Tim Morgan asked John Dever, III, what "No Comment" meant next to the Fire Department on his staff review. John Dever, III, stated that was because at the time he was preparing his staff review, he had not received any comments back from the Fire Department. Randy Joyner stated when he moved to that property, he signed a waiver stating that he would not hold the Alton Fire Department liable if they could not access his property, and that document was recorded at the Registry of Deeds.

Lou LaCourse asked if the cupola was going to have a floor on it. Randy Joyner stated currently it had a ramp, which would allow him access to be able to work on it. Ideally, he wanted to place some mesh material on it so air could flow. He was also going to build a metal staircase up to it in order to allow him access to open up/close the windows.

Steve Miller opened public input. No public input. Steve Miller closed public input.

Steve Miller moved the Board onto the worksheet.

Lou LaCourse stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B. The plat was part of the accepted application package.
All Board Members agreed.

Steve Miller stated that the specific site **is** an appropriate location for the use. He thought the hay needed the cupola for air flow.
All Board Members agreed.

Paul LaRochelle stated that factual evidence **is not** found that the property values in the district would be reduced due to incompatible land uses.
All Board Members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. There was no input from abutters, with the exception of anecdotes from Mr. Joyner.
All Board Members agreed.

Lou LaCourse stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic,

including the location and design of access ways and off-street parking. He stated that as presented by the applicant, the town was released for any responsibility, because Randy Joyner signed a waiver with the Fire Department.
All Board Members agreed.

Steve Miller stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated that there were no utilities needed for the proposed use of a cupola.
All Board Members agreed.

Paul LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that none of these applied to this application.
All Board Members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that a cupola on top of a barn was an attractive structure. Lou LaCourse stated that the allowance was due to the fact that it could not be seen, it was on a large piece of land, it would have no negative effect on abutters, and it was not an eye sore.
All Board Members agreed.

Tim Morgan moved to grant the Special Exception for Case #Z18-03.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

OTHER BUSINESS

1. Previous Business: Third reading and adoption of the Town of Alton's ZBA By-Laws, draft dated January 25, 2018.

   John Dever, III, suggested the following changes:
   -Page one, Section 4. Membership, 4.2 should be added to 4.1.
   -Page three, Section 8. Records, the first sentence should read: "The minutes and By-Laws of the Board shall be kept by the Town Clerk with assistance from the Planning Board staff, and…..". Add an additional paragraph that would read: "All other records shall be kept by the Planning Department and shall be made available for public inspection, in accordance with statutory requirements."
   -Page four, Section 10. Application and Decision Process, 10.1 should read: "An applicant may appeal an Administrative Decision based on an interpretation of a Zoning Ordinance made by any official or Board of the Town of Alton, provided the application for appeal is submitted within thirty (30) days of the date of the correspondence detailing the decision. A copy of the written decision must be submitted along with the application. When such an application is submitted, the official or Board shall furnish a copy of the entire file concerning the matter to the Board for inclusion into the Board's records no later than fourteen (14) days prior to the scheduled hearing date."

   Tim Morgan suggested the following changes:
   -Page three, Section 7. Meetings and Hearings, 7.2.1, there was an extra "to continue".
   -Page five, Section 10. Application and Decision Process, 10.5, second paragraph, started with "On the other hand,", strike that so the sentence would start with "The Board may reconsider……".
   -Page seven, 10.10 Decision, 10.10.1, the third line should read: "….by the chairman of a motion and duly seconded, then followed by discussion…..".

Steve Miller suggested the following changes:
-Page one, Section 1. Authority, he thought that a sentence should be added indicating that the "Board" meant the "Zoning Board of Adjustment". Tim Morgan suggested to add it to the heading so it would read: "Zoning Board of Adjustment (Board)".
-Page two, Section 5. Officers, 5.3, the last line should read: "…..agreed to delegate the clerk's duties to the appointed secretary, as voted by the Board."
-Page 3, Section 7. Meetings and Hearings, 7.3, the second sentence should read: "In the absence of the chairman, vice-chairman, and the clerk, the most senior member will preside."
-Page 6, 10.8 Public Hearing, 10.8.1, it stated that the clerk shall read the notice for the application and that was not how things were currently handled. He stated that next month, the clerk will take upon those responsibilities.

Steve Miller moved to accept the Town of Alton's Zoning Board of Adjustment By-Laws for the third and final reading, as amended on February 1, 2018.
Paul LaRochelle seconded. Motion PASSED by a vote of (4-0-0).

2. New Business:

3. Approval of Meeting Minutes: December 7, 2017

Lou LaCourse moved to approve the minutes of December 7, 2017, as presented.
Paul LaRochelle seconded. Motion PASSED by a vote of (4-0-0).

4. Correspondence: None.

ADJOURNMENT

At 9:50 p.m., Tim Morgan moved to adjourn.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

Respectfully submitted,

Jessica A. Call
Recording Secretary

Minutes approved as amended: May 3, 2018