

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
Thursday, February 3, 2022, at 6:00 PM  
Alton Town Hall**

**MEMBERS PRESENT**

Thomas Lee, Chair – excused absence  
Paul Monziona, Vice Chair  
Frank Rich, Member/clerk  
Paul LaRochelle, Selectman’s Representative  
Tim Morgan, Member  
Mike Hepworth, Alternate Member

**OTHERS PRESENT**

John Dever, III, Code Enforcement Officer  
Jessica Call, Town Planner  
Jeremy Kemper, applicant  
Jonathan Kemper, owner  
James Hayden, White Mountain Survey & Engineering, Inc. – representative for applicant  
Colin Spence, Keewaydin Park Association  
Jim Steiner, Esq., representative for Keewaydin Park Association  
Nathan Michaud, applicant  
Laura Ogonowski, applicant  
Elizabeth Oganowski  
Kaitlin Murphy  
Bob Smethursi  
Sandra Hammond  
Nick Oberti

**CALL TO ORDER**

Vice Chair Monziona called the meeting to order at 6:07PM.

**INTRODUCTION OF BOARD MEMBERS**

Roll Call was taken for the Board members and individuals present at Town Hall.

**APPOINTMENT OF ALTERNATES**

**Mr. Rich made a motion to appoint Mr. Hepworth as full member of the Board for this meeting. Mr. Morgan seconded the motion. Motion passed, 5-0-0.**

**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 that 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

The Board reviewed the agenda. No changes were made.

**Mr. LaRochelle made a motion to approve the agenda as presented. Mr. Morgan seconded the motion. Motion passed, 5-0-0.**

### CONTINUED APPLICATIONS

*(Continued from January 6, 2022)*

<b>Case #Z21-31 White Mountain Survey &amp; Engineering, Inc., as Agent for Laura E. Ogonowski-Michaud Family Trust, Owner</b>	<b>Map 38 Lot 23 51 Keewaydin Drive</b>	<b>Special Exception Lakeshore Residential (LR) Zone</b>
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A **Special Exception** is requested to **Article 300, Section 320 J.** of the Zoning Ordinance to permit the demolition of two existing nonconforming structures and replace them with a more conforming structure composed of a single family home and attached garage.

Vice Chair Monziona read the public notice into the record and reopened the case. He stated when the case was first presented at the December 2021 meeting, the application was reviewed and accepted as complete. During the discussion at that time, it was requested by the applicant to continue to the January 6, 2022 meeting. On January 6, 2022 a further continuance was given due to the fact that only three members of the Board were present at that time.

James Hayden, representative for applicant, stated at the December meeting it was determined some abutters, as well as the association, had not received copies of the plans. Mr. Hayden stated since that time he has had conversations with the president of the association along with Mr. Dever and there are three concerns that seem to keep coming up.

Vice Chair Monziona noted there was formal written objection received from legal counsel on behalf of the Keewaydin Park Association.

Mr. Hayden stated the first concern is about the road and existing conditions of the road then the condition of the road after the construction process. Mr. Hayden stated the applicant has shown from the beginning, they are not only willing to pay for road repairs but do all that can be done to mitigate any damage to the road including use of rubber track machines and laying down sheets of plywood on the asphalt. The applicant has also requested the contractor use the smallest machines they have to minimize the weight on the road. The applicant has rented two properties on Route 11 which will serve as storage areas for materials and construction equipment to help

alleviate traffic on Keewaydin Drive; a couple members of the park have also given permission to utilize driveways for storage. Mr. Hayden stated there is also an advantage to having this work done in the winter when the ground is frozen and there is less damage to the roads by machinery.

Mr. Hayden stated there have been concerns expressed about the septic design; he stated they have not submitted plans to the Building Inspector yet but it is something that will also be submitted to the State for approval. He explained that because its within 125' of the water, they are required by law to use a clean water system; he explained the Clean Solution System where the treatment of the bacterial waste will take place inside the tank and its comparable to a level 2 treatment at a wastewater facility. The state also regulates that these systems be inspected.

Vice Chair Monziona asked what the current system is. Mr. Hayden stated it's a cesspool, possibly a chamber in the ground with some holes in it with no real treatment at this time. He stated it will be within the well radius of a couple lots but it is the only location on the lot where it can be located due to the size and proximity to the water.

Mr. Hayden stated the other concern is the proximity of the building to the boundary line. He stated it is close, but the existing house is being taken off entirely from the park's land entirely on to a seperate parcel. Also, the total square footage and total impervious surface are being reduced; the encroachment into the 50' vegetative buffer is being reduced by 180 square feet. He stated the concern about encroachment on the property line was due to future expansion of the parking lot, however, there is a 20' elevation in an area spanning about 40'. In line with the current parking lot regulations, there is no room for expansion. Mr. Hayden stated future development of the lot is mostly within the 50' buffer and with the town and state constraints, development is unlikely.

Mr. LaRochelle asked for clarification of the location of the septic. Mr. Hayden explained the Clean Solution System and stated it would be under the driveway; he stated there is no other possible location on the lot. He stated the level of treatment this system will provide is a good compromise with its location to well radiuses.

Vice Chair Monziona asked for more explanation of the leaching process. Mr. Hayden explained the process happens through the concrete chambers which are over a bed of sand; instead of pipes there are concrete chambers so when the affluent gets to the tank it is treated. It will be a small leach bed because the affluent is treated before it gets there through an aeration circulation process.

Mr. Rich asked if there is an alarm system. Mr. Hayden stated there is not because there is no electronics in this system, but the State requires regular inspection of the tanks. He stated the system could handle a 4 to 5 bedroom home.

Mr. LaRochelle asked how often this type of system should be pumped. Mr. Hayden stated it would be once a year, but the State will mandate the inspection process.

Mr. Dever stated the maintenance agreement will be recorded with the Registry of Deeds and will run with the property.

Mr. Hayden stated overall this will be an improvement to the groundwater in this area. He confirmed the location of the well will be appropriate to the septic and there is adequate space on the lot for well placement.

The applicant stated the current home and systems have been nonconforming for 100 years; the main goals of this project are to relocate the home, install a real septic and drill a well on their own property. He stated when they purchased the home, no one knew the true nature of the maintenance of the current cesspool; the new proposed septic system will move it away from the association's beach, docks and swimming areas but will also be cleaner and safer for the environment. He stated he does not want to block his neighbor's view of the lake and so positioned the house accordingly. He stated those neighbors are supportive of the project.

The applicant addressed issues raised in a letter received from Keewaydin Park Association; he stated he contacted the association president and offered to join the association but was denied as the association bylaws limit the number of members; he noted the roads seem to be the primary concern, but it is terrible condition and has been for some time. He stated when they were planning the project, they tried to align the timeline with getting most of the work done when the ground is frozen, and they would do what they could to mitigate any damage to the road. A silt fence was installed already before the ground froze. The applicant stated he is happy to contribute to the bond or repairs of the road despite not being an association member. He stated there was concern about liability insurance, but they will be maintaining coverage through the duration of the project.

Vice Chair Monziona asked if there were any department head reviews. Mr. Dever noted they were sent out and responses were received but the Board did not have any of those presented. Mr. Dever stated the Conservation Commission, Highway Department, Water Department, Police and Fire Departments had no concerns.

Mr. LaRochelle asked what the difference is between the existing encroachment and the proposed property line along the parking area. Mr. Hayden stated the footprint is currently over the property line by 7/10 of a foot; the proposed overhang will be 6/10 of a foot with the foundation 1 foot from the property line.

Mr. LaRochelle noted the house cannot be moved back further due to the steep slopes at the back of the lot; the house will be moved out of the 50' buffer and out of the side setbacks.

Vice Chair Monziona noted in the formal objection which was filed, there was a suggestion that a 3' encroachment be considered instead of 9'. Mr. Hayden stated it would change the architectural design and they would have to resubmit for the NH DES Shoreline permit which would further delay the project. He stated it could have ramifications throughout the entire design of the structure.

Mr. Rich asked the applicant if he knew that some of the building was not on his property. The applicant stated he did. Mr. Rich asked what the options are in if this Special Exception is denied. Mr. Dever stated the current structure is grand-fathered; the encroachment has been there

since it was built in approximately 1890 and predates everything in the association. Mr. Rich suggested the applicant could take the building to the ground and rebuild on the current foundation; it would not be more nonconforming than it is. Mr. Hayden stated the septic would stay where it is. It was noted the encroachment has been there since it was built.

Mr. Rich asked Mr. Dever if he concurs with the applicant's suggestion that it would be very difficult to for the Keewaydin Park Association to utilize the land for some other reason. Mr. Dever stated he agrees; he explained the proximity to the lake and the 50' shoreline buffer along with the slopes, is not the kind of disturbance that NH DES wants to see in the area. It would be counterproductive and expensive.

Vice Chair Monziona opened the public hearing to input in favor of the application. None was indicated.

Vice Chair Monziona opened the public hearing in opposition to the application.

Jim Steiner, Esq., representative for Keewaydin Park Association, stated the association took a vote to address this application with 80% being against the Special Exception being approved in its current form. Mr. Steiner stated the association is not against the applicant being able to do something with the house, but they have concerns about zoning ordinance and state statutes issues that haven't been addressed. He outlined the issues in Section 320 which include a waiver for 9.6 of a 10' setback; the replacement of a structure being voluntarily removed, needs to meet certain criteria and comply with all setback requirements. He outlined the criteria which the replacement needs to comply with in order for a Special Exception to be granted which include that the new structure cannot create a new nonconforming structure. Mr. Dever noted the section Mr. Steiner is referencing is in regard to nonconforming uses; this is a nonconforming structure but the use is not nonconforming.

Mr. Steiner suggested the house could be designed differently so the setbacks could be met; he stated the benefit to that could be other options for the septic as well. He stated there is also the private road issue and the applicant has indicated he would cover costs but that doesn't mean the association won't have to go to court to get relief; he stated RSA 674:41 and RSA 231:81A obligates that the applicant is 100% responsible for any and all damage done to a private road. Mr. Rich asked whether reconstructing the applicant's home would be a reasonable use. Mr. Steiner stated it would but it doesn't negate the responsibility of a neighbor from damaging a private way. Mr. Rich stated if the applicant posts a bond, the association would be required to give him access across the private road. Mr. Steiner agreed.

Vice Chair Monziona stated there is no statute provision which requires the Zoning Board to impose that responsibility or to post a bond and he suggested it's a simple issue between property owners. He questioned whether there is anything the Board can do to guard against damages; he stated it would be an issue between the property owners. Mr. Steiner stated zoning boards have granted exceptions with conditions unrelated to the criteria. He suggested there be conditions which relates back to the State RSA and that a \$10,000 bond would be reasonable. He stated there is also concerns about the setback and clarified there is no intention by the association to put in a parking lot but that has nothing to do with whether the Special Exception should be

granted. Mr. Rich asked what would be acceptable in regard to the setback. Mr. Steiner stated the association members agreed 5' would seem to be reasonable to allow the applicant sufficient space and it may provide other options for the location of the septic.

Mr. Rich summarized there is a concern about the liability of trespassing on the Keewaydin to do the project but if the applicant wants to stay on his property, he could build the home without stepping on the property. He stated they have waived setbacks in order to accommodate nonconforming lots and make them more nonconforming; he asked if the association would accept 3' setback. Mr. Steiner stated he can't negotiate without speaking with the association president. Mr. LaRochelle questioned if the structure is changed to meet the setback, would the location of the septic change.

Vice Chair Monziona stated there is question whether the use of the right of way and encroachment on the property line is appropriate. Mr. Steiner stated right of way isn't typically the space around a foundation. Mr. Rich noted this property has been encroaching on Keewaydin property for nearly 120 years. Mr. Steiner stated that is called adverse possession but requires permission. He reiterated the desire of the association for the setback to be met at 5' and that the house could be redesigned to meet it.

Mr. Hepworth asked what is on the Keewaydin property past the boundary line. Mr. Steiner stated it is all trees and goes down to a ballpark.

Collin Spence, Keewaydin Park Association, stated the current septic needs to be removed as its on Keewaydin property. Vice Chair Monziona stated if the septic isn't on the lot, that would be another nonconformance of the lot.

The applicant stated that before the original project was submitted, he discussed with the president of the association that rubber track machines would be used whenever possible; he stated the 6/10 of a foot over the boundary line does not seem to have a reason why the association doesn't want it.

Randy Walker, representative of applicant, explained there is a tree line with the existing septic on both sides of the tree line; the applicant has no problem moving the entire septic on to his own property and remove that encroachment. Mr. Walker stated in regard to the road issue, the applicant is aware that he is responsible for any damage to the road as required by law. He questioned whether the Board has the authority to require a bond be posted. Mr. Walker summarized the applicant has a 100 year old home that is need of a facelift and it encroaches over the property line while the new one will not; the existing house encroaches in the 50' shoreline setback while the new one will not; the existing house encroaches the deeded side setbacks but the new house will be pulled back and less nonconforming; the old septic will be removed and the new one placed fully on its own property; the existing house uses lake water but the new one will have it's own well; storm water mitigation measures are also being added. Mr. Walker also addressed the special exception criteria noting the use is reasonable, surrounding values will not be diminished and no valid objections have been raised outside of suggested changes; there won't be undue nuisance and proper facilities will be appropriate and overall the lot will become less nonconforming.

Mr. Steiner suggested at some point at a later date, a boundary line adjustment may be appropriate for the side setback.

Mr. Hepworth asked how the cost of the septic system compares to a regular system. Mr. Walker stated it would be about double and noted the location of the proposed system is the one that makes the most sense.

Vice Chair Monziona closed the public input portion of the hearing.

***Discussion – Case #Z21-31***

*The Board must find that all the following conditions are met in order to grant the Special Exception:*

Mr. Morgan stated that a plat/plan **has** been submitted in accordance with the appropriate criteria in the Zoning Ordinance, Article 520.B. The Board agreed.

Mr. LaRochelle stated the specific site **is** an appropriate location for the use. He stated it is a residential property and the use is not changing. The Board agreed.

Mr. Rich stated that actual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated it is rural residential, lake front property and there has been no testimony that values will be reduced; it is a 100 year old home which will come up to code with a new septic system which will only enhance the value of the property and those around it. Vice Chair Monziona stated when properties are improved in this way, surrounding properties are often increased in value. The Board agreed.

Vice Chair Monziona stated there **is no** valid objection from abutters based on demonstrable fact. He stated that after considerable discussion, the objections and concerns are legitimate but this issue of encroachment has existed for a long time; for any maintenance to the old structure, the owner would have to be on the other property; he stated after all these years they aren't creating a problem for the abutter but any improvement is going to make it less nonconforming. Although the objection is well reasoned, it isn't valid given the history of the properties. Mr. Morgan stated he disagrees as it could be construed as criminal trespass and is a valid objection. Mr. LaRochelle and Mr. Hepworth stated they agree with Vice Chair Monziona. Mr. Rich stated he doesn't believe there are valid objections because the existing home has been there for over 100 years and Keewaydin had no objection to usage of the land to take care of the home in the past. He stated the six aspects which will make the property less nonconforming, overrides the objection.

Mr. Hepworth stated 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 there is no evidence of that. Mr. LaRochelle noted it's a dead end street and that is not changing. The Board agreed.

Mr. Morgan stated adequate and appropriate facilities and utilities **will** be provided to insure the proper operation of the proposed use or structure. He stated there will be substantial upgrades over the existing property. The Board agreed.

Mr. LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water

supply. He stated after considering the existing cesspool which the condition is unknown, the upgrades with a new advanced system will be adequate and the water supply will be a new well. Vice Chair Monziona stated he agrees, provided that the septic system is approved and installed properly and an adequate and appropriate well is also place on the property. The Board agreed.

Mr. Rich stated the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. He stated the Board tries to look at nonconforming issues and the applicant has demonstrated that he has done his best to make it more conforming, which is within the spirit and intent of the ordinance. Vice Chair Monziona stated the proposed plans are consistent with protecting the land. The Board agreed.

**Mr. Rich made a motion to grant the application for Special Exception for Case #Z21-31, with the conditions as follows: what has been displayed by the applicant in terms of the septic and well, in the applicable places and design. Mr. LaRochelle seconded the motion. Discussion:** Vice Chair Monziona suggested adding the condition that the old septic system be removed

**Vice Chair Monziona made an amendment to include the condition that the old septic system is removed and the new well and septic system be appropriately placed on the property and approved by New Hampshire Department of Environmental services.**

**Motion passed, 4-1-0.** Mr. Morgan opposed.

#### **NEW APPLICATIONS**

<b>Case #Z22-02 Kemper Landholdings, LLC, c/o Jeremy Kemper, Owner</b>	<b>Map 19 Lot 32 67 Drew Hill Road</b>	<b>Special Exception Rural (RU) Zone</b>
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A **Special Exception** is requested to **Article 400, Section 401 D. 17.** of the Zoning Ordinance to permit a Contractor's Yard as defined in the Zoning Ordinance.

Vice Chair Monziona stated he recused himself from a prior case for a Contractor's Yard and although each case stands on its own, and he feels he can be impartial but will recuse himself.

The Board reviewed the application for completeness.

**Mr. LaRochelle made a motion to accept the application for Case #Z22-02 as complete. Mr. Morgan seconded the motion. Motion passed, 4-0-0.**

Jonathan Kemper, applicant and owner, stated he and his brother own a landscaping business and the plans are for a 40 by 60' building on a 33.475 acre parcel to be used for equipment, tools and trucks storage. The proposed building along with parking for five employees, will be set back about 400' from Drew Hill Road. The location is tucked in behind a buffer of trees and vegetation which will reduce noise and visibility from the road; noise will be limited as they are not there all day.

Mr. LaRochelle asked how many pieces of equipment are moved each day. Mr. Kemper stated equipment is typically left at the job site so equipment is not going in and out each day. He stated there are three one-ton dump trucks, a mini excavator, bobcat and small dingo. Pictures were



presented showing the equipment to be stored on the site. Mr. Kemper confirmed no sales or customers come to the property. He stated all mechanical work and maintenance is done off-site. A septic and well will be installed to service a bathroom.

Mr. Morgan noted multiple letters were received from abutters and neighbors, in opposition of the application. Mr. Kemper stated he reviewed the letters, and some are not abutters, many being from across Route 28; he stated the main concerns were about noise but they won't have any heavy machinery. He stated there are also concerns about valuations; he spoke with the assessing officers and looked at all lots around Beckwith (contractor yard), Jeddry and other contractor yards in Town, and when he tracked property values, every single abutting lot has actually increased in value since 2018.

Mr. Kemper stated the proposed building will be stick-built with lean-to off each side; the driveway has already been put in and goes back off the road. He stated they take pride in their work and will ensure the appearance is aesthetically appealing. They have already planted a tree, will be putting in grass and wildflowers. Mr. Kemper stated they are simply looking to have a single place to store all their equipment in a single location. He stated they have talked with direct abutters, who generally are happy to know the 33 acres is not going to be subdivided. Mr. Kemper stated there was a concern by an abutter of Stage Coach Road, about seeing it but everything will be located 400' back from the road with a lot of vegetation and tree buffer, along with a berm. Mr. Kemper stated much of the land surrounding his lot is undeveloped forest land.

Mr. Rich asked if there will be any kind of residence at the building. Mr. Kemper replied no.

Mr. Rich opened the public hearing to input in favor of the application.

David Avery, resident, stated he received a Special Exemption a couple years ago on the same road for the same exact thing that is being proposed; he stated they are his business competition but while he has heavy equipment, they operate light equipment, and they do a nice job. He stated it would be a benefit to the community rather than a detriment, to have another good business in town. Mr. Avery explained he has much larger excavation equipment and received his Special Exception about eight years ago; he stated it is a quiet road.

Sandra Hammond, resident of Rines Road, stated the proposed plans are for a small operation but questions whether there will be more structures and equipment in the future. Mr. Kemper stated they don't have plans other than to enjoy using the property recreationally for hiking, four-wheeling, etc.

Ms. Hammond asked if the trucks are diesel. Mr. Kemper stated two of the trucks are diesel; he stated they close down in the winter at Thanksgiving; trucks won't be running to warm up. Ms. Hammond stated she is concerned about the noise and pollution of diesel trucks and whether she will hear it from her property. She asked if they plan to have stone or trees dumped on the property or will they be selling products. Mr. Kemper stated they will not be having retail sales; he stated they leave the yard in the morning and don't return until the end of the day. Mr. Kemper reiterated they currently have five employees, including themselves and they want to stay a small operation.

Mr. Rich asked Ms. Hammond if she would be in support of the proposal. Ms. Hammond stated she would not object.

Mr. Rich opened the public hearing in opposition to the application.

Doug Swaffield, Rines Road resident, asked if the trees were cleared on lot 31. Mr. Kemper stated they plan to sell the lot as a building lot. Mr. Swaffield stated they are concerned about the Kempers owning both lots on either side of Rines Road, a class VI road and they don't want it to get blocked. Mr. Kemper stated its still a Town road and they can't block it. Mr. Swaffield stated he is also concerned about noise, noting the Jeddry contractor yard has a rock crusher, and it can be heard ½ mile away and but is happy to know the Kempers are only landscapers so that shouldn't be the issue. Mr. Swaffield stated he is still opposed to the proposal after hearing the details of the plan because he's concerned about how it can be a "slippery slope."

Mr. Morgan noted several letters received by the Planning Office which indicated opposition to the proposal. Mr. Rich noted most were not abutters. He stated there is a difference between the Jeddry and Beckworth properties and this applicant has brought a well-planned out the proposal. Mr. Dever confirmed those properties are also in rural zones; both came in for approval many years ago. Mr. LaRochelle stated its also important for people to meet with abutters and neighbors to make sure they understand what is going on rather than having them presume the worst.

Mr. Rich asked if a residence will be established or whether the lot will be subdivided. Mr. Kemper stated no house and no subdivision; he explained the size of the lot which would allow them to place the structure in a corner and then be able to utilize the rest for recreation, was a huge factor in purchasing the property. Mr. Rich asked if it was a gravel pit at one point. Mr. Kemper stated it does appear to have been used by a town or state for that purpose and there is a lot of sand on the lot.

Mr. Rich closed the public portion of the hearing.

***Discussion – Case #Z22-02***

*The Board must find that all the following conditions are met in order to grant the Special Exception:*

Mr. Hepworth stated that a plat/plan **has** been submitted in accordance with the appropriate criteria in the Zoning Ordinance, Article 520.B. The Board agreed.

Mr. Morgan stated the specific site **is** an appropriate location for the use. He stated it is a large piece of property and the proposed use will have minimal impact. The Board agreed.

Mr. LaRochelle stated that actual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated evidence and research was done on property values but none that the values would diminish. Mr. Rich stated none of the objections expressed were in regard to values being reduced. The Board agreed.

Mr. Rich stated there **is no** valid objection from abutters based on demonstrable fact. He stated

this reasoning is based on the validity of the objection of the abutters with one saying she had no objection, and another had none; there was an abutter across the street who had an objection but also an abutter across the street with no objection. Mr. Rich stated there is no valid objection given that the applicant's proposed building is going to be such a distance from the road and only light equipment will be present on the site versus what is in the surrounding area. Mr. Hepworth stated the objections were worth hearing but no demonstrable facts were brought forward. Mr. LaRochelle stated he understands the abutters' concerns and talking it out tonight helps in the understanding of that. The Board agreed.

Mr. Hepworth stated 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. The Board agreed.

Mr. Morgan stated adequate and appropriate facilities and utilities **will** be provided to insure the proper operation of the proposed use or structure. He stated the plans indicate power will be run from the road, back to the site of the building. The Board agreed.

Mr. LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated the lot is 33 acres with adequate area for both the water supply and the septic system. The Board agreed.

Mr. Rich stated the proposed use or structure **is** consistent with the spirit of this ordinance and the intent of the Master Plan. He stated based on what the applicant has said, and the plans presented, he believes the spirit of this ordinance and the intent of the Master Plan has been warranted. Mr. Hepworth stated that given the topography of the lot and the setback from the road, it is appropriate. He stated it is the burden of the applicant to show that they won't negatively interfere with neighbors and the applicants have done so. Mr. LaRochelle noted this is an acceptable use by Special Exception in rural areas and this is an appropriate use for the area. The Board agreed.

**Mr. LaRochelle made a motion to grant the application for Special Exception for Case #Z22-02. Mr. Morgan seconded the motion. Motion passed, 4-0-0.**

The Board took a five minute recess.

## **OTHER BUSINESS**

### **1. Previous Business:**

- a. Approval of Minutes: ZBA meeting minutes of December 2, 2021- The Board reviewed the draft minutes. Mr. Dever explained public testimony was taken without the public hearing being reopened so the testimony of Mr. Holway needs to be removed. The members present for the case agreed with the edit. Mr. Monziona abstained with regard to the content of the minutes for the case where he recused himself, Case Z21-29; Mr. Rich abstained from the new application Z21-30; and Mr. Morgan abstained from approving the minutes as he was not present. No further edits were made.

**Mr. LaRochelle made a motion to approve the minutes of December 2, 2021 with the exception of Mr. Monziona recusing himself for Case Z21-29 and the abstention from Mr. Rich for Case Z21-30. Mr. Hepworth seconded the motion. Motion passed.**

Jessica Call, Town Planner, clarified the previous motion needs to be for “amended” minutes.

Vice Chair Monziona, with the consensus of the Board, nullified the previous motion and requested a new motion be made.

**Mr. LaRochelle made a motion to approve the minutes of December 2, 2021 as amended, with the exception of Mr. Monziona recusing himself for Case Z21-29 and the abstention from Mr. Rich for Case Z21-30, Case Z21-31 and Case Z21-32. Mr. Hepworth seconded the motion. Motion passed.**

**2. New Business:**

- a. Continued from January 6, 2022 Meeting:** *Request for Rehearing, Case#Z21-29, John Goodrich, Lisa Nicastro, Map 9/Lot 33-2, 239 Henry Wilson Highway, Contractor’s Yard, Special Exception, Residential Rural (RR) Zone*

Vice Chair Monziona recused himself from this item.

The Board reviewed the request for rehearing. Mr. Morgan stated an appeal seems reasonable to him; he pointed out an instance a few months ago where someone asked for an appeal and the case ended up going before the Belknap Superior Court. Judge O’Neill cited this Board’s comments and discussion during the appeal process. Mr. Morgan stated the right to an appeal seems appropriate in preserving everyone’s rights. Mr. LaRochelle stated he agrees; its important for the public to be able to have the opportunity to be reheard. He stated he believes the intent of the Master Plan needed to be looked at closer and there were no demonstrable facts presented in regard to objections. Mr. Hepworth stated an appeal seems appropriate and asked if it will be the same information presented or new information. Mr. Morgan stated they will have the right to present new information and aren’t precluded from presenting previously presented information but they need to persuade the Board that a mistake was made in the decision, something was misunderstood or not given proper weight in consideration. Mr. Rich stated this would be a good opportunity to consider whether a mistake may have been made and be corrected. He stated he believes the Board went out of its way to consider all the facts that were given at the time; he stated the criteria is that the Board has to agree on each and every one of the points and if not then it is denied. Mr. Rich stated he can’t get past the criteria for demonstrable fact regarding values of the properties and the objections of three abutters. He stated he doesn’t know if a rehearing is going to help and questions whether new information will change. Mr. Rich stated time was taken to walk the property, they saw things that demonstrated it appeared to be more than the applicants just working in their yard. Mr. LaRochelle stated a list of mitigation measures was presented and there may be more.

**Mr. Morgan made a motion to approve the request for a rehearing for Case**

**Z21-29. Mr. LaRochelle seconded the motion. Motion passed, 4-0-0.**

The rehearing will be scheduled for the next meeting, April 7, 2022 to allow for all original Board members to be present.

- 3. Approval of Minutes:** ZBA meeting minutes of January 6, 2022 – No edits were made. **Mr. Morgan made a motion to approve the minutes as presented. Mr. LaRochelle seconded the motion. Motion passed, 5-0-0.**

- 4. Approval of ZBA Application of Appointment to the Zoning Board of Adjustment:**  
*Michael Manning.*

Mr. Dever stated Mr. Manning was unable to attend this meeting but he will attend the next meeting to meet the Board.

**Mr. Morgan made a motion to table the Application for Appointment to the next meeting. Mr. LaRochelle seconded the motion. Motion passed, 5-0-0.**

- 5. Correspondence:** None.

**ADJOURN**

**Mr. LaRochelle made a motion to adjourn. Mr. Morgan seconded the motion. Motion passed, 5-0-0.**

The meeting was adjourned at 9:15PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary