

TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
March 7, 2013
Approved 6/6/13

I. CALL TO ORDER

Tim Kinnon, Chair, called the meeting to order at 7:03pm

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Tim Kinnon, Chair, introduced himself, the planning Department Representative, and the members of the Zoning Board of Adjustment

John Dever, Building Inspector and Code Enforcement Officer
Paul Larochelle, Alternate
Tim Morgan, Vice Chair
Lou LaCourse, Member
Steve Miller, Member

III. APPOINTMENT OF ALTERNATES

T. Morgan made a motion to appoint Paul Larochelle as a member for this meeting. S. Miller seconded the motion which passed with five votes in favor, none opposed and no abstentions.

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 gage 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 hearing 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

There were no changes to the posted agenda.

S. Miller motioned to accept the agenda as presented. P. Larochelle seconded the motion which passed without opposition.

VI. CONTINUED CASES

No changes to the continued case. S. Miller moved to seconded by Paul L. all in favor

Case # Z13-1 New Durham Road	Variance Map 9 Lot 57	T&M Fitzgerald Family Rev. Trust Residential Rural District
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Thomas and Maureen Fitzgerald propose to construct a restaurant with drive-thru and associated parking and

drives with access from other than a Class I, II, III or IIIa highway (New Durham Road.)

Mr. Dever informed that Board that a letter was received from the applicants requesting a continuance until next month as they are still awaiting information from the DOT.

S. Miller made a motion to accept and grant the continuance of Case #Z13-1. P. Larochelle seconded the motion which passed with all in favor.

Case # Z13-2 Roberts Cove Road	Special Exception Map 21/Lot 12-2	Trustees of Brewster Academy Lakeshore Residential District
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On behalf of the Trustees of Brewster academy, Regina A. Nadeau, Esq. of Normandin, Cheney & O'Neil, PLLC, is proposing a conversion of existing use of site from three year round and four seasonal structures to three year round and two seasonal structures with no increase in the number of bedrooms.

T. Morgan made a motion to accept the application as completed, the motion was seconded and which passed with all in favor.

Regina A. Nadeau, of Normandin, Cheney & O'Neil, PLLC representing Brewster Academy and Brian Berlin of Land Tech provided an overview of the purpose of the application. The property was used by Brewster Academy and has a special exception use for educational use. Brewster Academy has decided to sell the property. The purpose of the application is to not waive the special exception that Brewster has for the educational facilities but if the approvals are granted and a sale does go through, it will be at that time that they would invoke the new special exception and surrender the old one.

Mr. Dever confirmed to the Board that it was a variance that was previously granted.

Ms. Nadeau informed the board that they want to reduce the number of buildings on the property from seven to five. One year round building and one seasonal building will be removed and the removal of a third building with construction of a new one. The net result will be no additional bedrooms and will result in converting three seasonal bedrooms to year round.

Ms. Nadeau continued that going from three seasonal bedrooms to three year round bedrooms would be an expansion of use and that is the purpose of the first request for special exception. Under the criteria for expansion for non-conforming use and the reason that this is a non-conforming use, is because within the last decade the ordinance has prohibited multiple year round residences on the same parcel of land. They are requesting a special exception under Article 320 Section A4. Expansion of a Use by raising 3 structures, building a new structure with a net increase of converting three seasonal bedrooms to three year round. A site plan has been submitted and believes that the site is an appropriate use and there is already a mixed use on the property. They would be reducing the structures and all of the surrounding properties are either seasonal or year round and would not change the use that is there now. There should be no adverse impact on property values as it would be essentially on the interior of the 11 ¼ acre parcel.

Two buildings that are currently non-conforming would be eliminated not only because of the number of buildings on the site, but because of where they are sited on that land. Ms. Nadeau does not see a valid objection from the abutters because they are eliminating structures completely that are in violation of the ordinance for other reasons. Reducing the density of the number of buildings from seven to five and the intended location of the new structure would be located near the shore and due to the wooded nature of the site it would have no actual impact on the abutters. It is not believed it will be a hazard on the roadway as there is 240 feet of line of site.

Three older buildings will be removed that are not built to code with older septic systems and constructing one that will be up to code.

S. Miller asked what would be the anticipated use, are you looking to sell it as commercial property; Ms. Nadeau responded that no it is intended to be continued as private residential.

S. Miller asked do you have any other evidence that property values would not be lowered for the abutters. Ms. Nadeau stated that all we have is that we are reducing the structures, reducing the impact. The ordinance promotes the facts that we honor setbacks and stay away from wetlands pockets and keeps the septic systems out of the wetlands; those reasons alone would be why they would have an improvement on abutting properties.

S Miller asked on the 5 buildings that would remain can you provide an approximate size of the acreage lot that each would sit. Ms. Nadeau responded that this is all one parcel of land, 11 ¼ acres we are not changing the footprint of the property and we are removing three to build one.

S. Miller asked what would be the minimum distance that two buildings would be in proximity to each other. Mr. Berlin spoke and stated that it would be 120 feet from the nearest structure.

S. Miller asked if there would be any shared septic systems. Mr. Berlin stated no, currently all structures have their own septic systems. Mr. Miller asked and those septic systems are for a minimum of how many bedrooms. The new structure would have five bedrooms. Mr. Miller asked if each building had a well. Mr. Berlin responded that there are three different wells on the property. The water system is hard to track down as the records are non existent.

Mr. Miller asked how far away the closest structure to the waterfront would be. Mr. Berlin stated that there is an existing structure and at the closest is fifteen feet from the water's edge.

Mr. Miller commented the reasoning that the changing of some of the size of the structures is not because Brewster wants to do it, but because they are anticipating a sale and wants to clear up the items to make it a clean sale. Ms. Nadeau responded that these are two and 3 bedroom cottages and by eliminating three of them you can have a reasonable size home and it made a lot more sense.

Public Input

Bob Hughes, of Prudential Spencer Hughes Real Estate Listing Agent for the property does not represent the buyers but have met with them. Mr. Hughes informed the Board that their intended use was that they wanted to leave the cottages and build a year round home. There has been significant interest in the property but the others were looking for two, three or four water front lots. This buyer will have less impact on the property or the neighbors. The impact should be less when completed and meet all the criteria for the Shoreline Protection Act. Mr. Hughes feels that you couldn't find a better buyer for the property. There is no anticipation of subdividing.

Ms. Nadeau asked Mr. Hughes if I am relying on the ordinances on why there would not be an adverse impact on the neighbors, could he from a realtor's perspective, tell us what those factors are if you were looking at it from a neighbor's perspective. Mr. Hughes responded that we have had plenty of developers that were interested. Any investor/developer would have to maximize the value of the property. It is a beautiful piece of land but it has its challenges. To have somebody that only wants to put one year round home in the center of it and leave the other two existing, you couldn't ask for a better scenario. You are creating your own buffer. The center of the activity will now be at the center of the property as opposed to if you had it subdivided and sold off.

Attorney Arthur Hoover, representing the Babson family, who are direct abutters, wanted to make it clear that they are not opposing it and that they are more interested in information. Mr. Hoover complimented the application and stated it is a better use of the property than what is currently there. He has a couple of issues and is looking for information clarification. For the purposes of this request they focus on the storage building. The storage building is 48 ft. by 60 ft. Storage buildings are not permitted space in this zone. The question is, is this an accessory use or not and he has spoken with the code officer. Mr. Hoover read aloud the Accessory Use Ordinance. Is this really an accessory use or can it be built as a result of a variance. The storage building, if it is one floor, would have about 2900 square feet, which is 60% of the square footage of the new home. The new home would have a three car garage. He continued that Mr. Dever did some calculations and the storage building is the same size as you would have for a five car garage. If you go to two floors it is almost more than 5700 sq. ft. which is 901 sq. ft. more than the main building, including the three car garage. He stated that he is not saying that he is objecting to it but he is not sure if this is the right process to get there. Whether this is a legitimate accessory use or whether it is a use that will accommodate and as a guess would say it would be to store boats and asked what is it going to be used for?

Recess called 7:35pm

Meeting called back to order at 7:37pm

Mr. Hoover continued that this is a question the Board has to make a decision on. Whether this is an accessory building or it is a use that can only be permitted by a variance. The abutters would like to know what the intended use is.

S. Miller asked Ms Nadeau to describe the building in terms of how many rooms it has, the plumbing, seasonal or non-seasonal. Ms. Nadeau responded that they put it on the plans because the site has been the subject of litigation. There are no present thoughts for that building. They wanted to make sure they had adequate space for their cars, boats and other items and they were afraid that if an area was not set aside for this, somebody at a later date would say the Zoning Board said you could only have five structures and you cannot have a garage. It was not done with a detailed plan it was just with anticipation of a long line of litigation. She feels that it does not need to be on the plan. They are asking for an expansion of dwelling space. That would be a permit issue for Mr. Dever. It was put on as a courtesy. She does not feel that this is the appropriate venue to be debating about whether it is an allowable accessory use because they are not asking you to approve the site plan but asking you to approve the concept.

There was discussion on the size of the footprint of the proposed building and the size proposed for the garage. Mr. Miller stated the size of the building can accommodate three 40 ft trailers as an example. Ms. Nadeau stated that it is solely for the use of the owners of the property not offsite storage of other people.

Mr. Miller asked if it had rooms. Ms. Nadeau responded there are no floor plans. We are not at a point to design or seek a building permit.

Mr. Miller asked if the height allowed for a two story building. Mr. Dever said we are just talking about the footprint. This is the equivalent of 5 two car garages. If they came in and asked for a two car garage for each of the structures it would be normal and reasonable. There is nothing in place that your accessory structure can only be X% of your primary structure. We don't have any specific guidance for an accessory structure in this case. It can't be for

commercial use, it would have to be accessory storage for the residences. Mr. Dever will look at what is reasonable for the zone. The standard I have to use is somewhat subjective.

This will not be going to the planning board. This is a residential use and does not go to the planning board. It was placed on the plan for discussion only and is not part of the request. Mr. Hoover accepted this explanation.

Mr. Hoover noted that there is a right of way that goes through the property in favor of his clients and wants to make sure that none of these structures or buildings will interfere with that use. The set back from the right away is 25 feet.

Page 21, Section 327, A2 states, twenty five feet from the Right-a-Way line of any street or highway whether it is public or private. Ms. Nadeau stated that she did not see where it applied as it states street or highway. If it is a delineated right of way, then in that case it is 25 ft. from the edge of the right of way and Town adheres to that.

The delineated width on the property runs 10 ft. to 25 ft. The courts have supported the Right-a-Way. If it is not specifically delineated in the deed, then what is directed is the edge of the travel way as your edge of right-a-way. It was the subject of previous litigation and was settled by the courts.

Mr. Miller asked Mr. Hoover if his clients were objecting as abutters to this special exemption. Mr. Hoover responded that he didn't think so. The questions they wanted him to ask were what the situation was with the storage building and the other was to make certain that the right away would not be infringed upon. There is a question they have with the other special exception application but it does not address the overall intent of the project. Mr. Hoover believes the Babson's would be in favor of it.

Ms. Nadeau did not have a closing statement and thanked Mr. Hoover. She briefly summarized the project and hoped the Board will see this project as a positive and grant our approval.

Mr. Miller asked for the building that is 15 feet away from the shore line is that being converted to a four season home. Ms. Nadeau stated that it is a seasonal two bedroom and we are not looking to convert that.

Public Input Closed

Work Sheet

Applied has been accepted in accordance with the Town of Alton Zoning Ordinance Section 520B. All agreed

All members have agreed that the appropriateness to specific site is an appropriate location for the use. All the information has been presented to us and speaks in favor to it. Agree that the removal of the two structures will have a positive impact on the site and the expansion of the structure will have a positive impact on the site and will not have any negative impact on the site.

All members agreed that factual evidence has not found that the property values in the district will be reduced due to incompatible usage. There is not an incompatible use that has been

presented and there has been expert testimony to the fact that property values would not go down and more likely would go up.

All members agreed there is no valid objection from abutters based on demonstration or that. Mr. Hoover spoke for the abutters and he did not object.

All members agree there is not undue nuisance or serious hazard to pedestrians or vehicular traffic including the location design of access ways and off street parking. There are very little changes to traffic flow and I think the applicant told us there was a 240 ft line of site both ways onto the main roadway. There is no undue nuisance.

All members agree adequate and appropriate facilities and utilities will be provided to ensure proper operation of the proposed used of structure and we have heard testimony that the site can support the proper septic systems and adequate water will be provided for.

All members agree there is adequate area for safe and sanitary sewage disposal and water supply. There are already systems there obviously approved. They are talking about closing some of them down and putting in a larger and better system. All agree

SM proposed use of structure is consistent with the spirit of this ordinance and the intent of the Master Plan. I believe this is the case based on the testimony given. I do still have a concern that I will voice on the accessory building. If a person has a tow truck business, the parking of the tow trucks there. I will rely on the attorney that this will be used for a residential purpose. All agree that it should be used for residential purpose

P. Larochelle made a motion to approve the application for Case Z13-2 and suggests a couple of caveats to the original approval. 1. The approval cannot be construed as the Board’s approval of the proposed storage building. The Board is not voicing an approval of that. 2. The 25 ft. set back of the right-of-way is observed. L. LaCourse seconded the motion which passed with all in favor.

Case # Z13-3 Roberts Cove Road	Special Exception Map 21/Lot 12-2	Trustees of Brewster Academy Lakeshore Residential District
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T. Kinnon read the case into the record.

Special Exception Trustees of Brewster Academy 443 Roberts Cove Road Lake Shore Residential District. On behalf of Trustees of Brewster Academy Regina Nadeau Esq.of Normandin, Cheney & O’Neil, PLLC is proposing a physical expansion of a dwelling structure having a non-conforming use.

P. Larochelle motioned to accept the application as completed. T. Morgan seconded the motion which passed with all in favor.

Ms. Nadeau invited Mr. Hoover to the table for joint discussion.

During the preparation of the application Ms. Nadeau met with Code Enforcement as it was an unusual proposal. The provisions of the ordinance were discussed and I agreed with Mr. Dever that a Special Exception was needed because we did increase the year round use. Code Enforcement determined that we needed to come before the Board under Section 320 A7 for Expansion of Structures for Non-Conforming Uses Beyond Existing Building Uses. This also

requires a special exception. She stated we kept saying we are ripping down one building and replacing it. She feels that it is irrelevant as they are ripping down 3 buildings and starting from scratch with a new footprint and we are not enlarging anything. We are not replacing in-kind. She understands that a concern has been raised by Attorney Hoover that this provision does not apply to us because we are not doing these things. She agrees with Attorney Hoover. However, if Attorney Hoover is of the impression that we need a variance I disagree. This is where you will have to decide. I read the ordinance as saying under 4, Expansion of Use, an owner of a legally expansion non conforming use may not expand it without first obtaining a special exception from the ZBA. The ZBA shall not grant such special exception unless the expansion is clearly not a new use and will not increase any inconsistent building non-conformance such as setbacks and lot coverage's.

The next section states, under paragraph 6, replacement of structures for non-conforming uses that are voluntarily removed. In kind replacement that are voluntarily removed need a special exception. In kind means no change in length, height or width and would not permit from seasonal use to year round. Ms. Nadeau feels that it does not apply because we are not doing an in-kind replacement of the building. I think the reason it is in there is so that if somebody isn't going for the first special exception, expanding the use, if they are going to replace the building they must come before the Board and prove they are not expanding the use and that they are doing it in-kind. Paragraph 7 states expansion of structures for non-conforming uses beyond existing building dimensions. You need a special exception and will not have an adverse impact on property owners and water supply and sewage. We are not converting any buildings. If we have met all the criteria and the purpose of the special exception is one for expansion of use to make sure the Board authorizes it and the other is for if they are modifying the building, it gives you oversight that they are not changing the use. To say now that I have a special exception is all I have to do is meet the criteria on the impact of the neighbors, septic and loading and then have to go to the ZBA to get a variance and show a hardship to build a building seems absolutely inconsistent with the mechanisms of the Ordinance. I agree that the section that we are coming in under is not necessary and I believe the proposal that I put before you in the last application and the approval you granted me is sufficient for us to proceed and I disagree that a variance is required. As a courtesy I believed it would be raised and I thought that we should get to the jurisdictional issue before we go through everything else.

Attorney Hoover stated that they are not objecting to the structure or the plan but in looking at the application, the first page of the application reads physical expansion of a dwelling that has a non-conforming use. The narrative reads the applicant proposed raising three of the seven buildings and replacing one of the seasonal structures with a year round larger structure with a garage. Specifically the applicant proposes replacing the Oakland's cottage with a year round five bedroom cottage with a larger foot print and a garage. The question Mr. Hoover has is whether that comes under number 6 or 7 of the zoning ordinance.

There was discussion regarding the ordinances and the replacement of structures and the wording of the application on the replacement. It was recommended that the board has already granted the applicant. Ms. Nadeau stated that if it was agreed that the special exception was not needed that it would be withdrawn.

John Dever stated a situation like this has not presented before. In a conversation he had with the Planner it was felt that Paragraph 7 was applicable. One of the issues is that Paragraph 7 deals

with existing buildings. In that case and having had a chance to revisit, it is not an existing building.

J. Dever stated we have granted the applicant what they wanted to do and that there needs to be a 6A as 6 and 7 does not cover this. Ms. Nadeau stated she would rather not withdraw the application and if they are in agreement she would rather have the Board deny jurisdiction.

There was discussion on previous applicants that were similar. The previous application speaks to converting existing use of the site not specific structure. Ms. Nadeau stated we would not be building a non-conforming structure.

S. Miller suggested that we deny Jurisdiction and obtain legal advice on the proper direction to go. This is a question of law and needs to be decided by an attorney

T. Kinnon recommended deliberating on the application and as a result it would probably be denied because it is not covered under 6 or 7. S. Miller asked what the verdict is if it is not applicable and T. Kinnon stated to deny the application as non-applicable.

That would create a prejudice to the application and create litigations. Ms. Nadeau sited a case that the Supreme Court recently heard regarding a zoning board case. Ms. Nadeau continued if you deny jurisdiction and somebody is upset about that, then they can appeal it and if nobody appeals it then it is clear that the town is in a position that no other relief under the ordinance is required. If the application is reviewed on the merits and it is just denied without a finding and should not be reviewing it without jurisdiction.

Z13-3 will be continued and advice from council will be sought. There was continued discussion on seeking counsel and jurisdiction. Ms. Nadeau will provide town counsel with a summary of their position. If it is found that we don't have jurisdiction because it does not apply to 6 or 7 that is something that should be in an administrative letter. At that point the application would be pointless.

T. Morgan motioned for a continuance until the April 4th meeting no prejudice account towards the applicant. T. Kinnon seconded the motion and passed with all in favor.

A meeting will be scheduled with Attorney Sessler.

There was continued discussion by the Board. P. Monzione asked the total square footage of the three structures they are removing. The total square footage of the three buildings, are they equal to or less than the building they are building. If it is equal to or greater, then it wouldn't be an expansion of use in the sense that there is more square footage.

Paul Monzione joined the Board from the audience.

VII. Other Business

A. Previous Business: None

B. New Business – Paul Monzione wants to add his comments to the record and to take a more careful look at the language that we tried hard to amend last year and that it should be looked at again. T. Kinnon stated having gone through the zoning ordinances again, I think we should take a little more time at the acceptance level. Just to make sure we are accepting

applications that fall in between. If we hadn't accepted this I think it could have been resolved a little bit easier outside of this hearing. To discuss an application it has to be accepted. I think the question of acceptance of an application is whether the application is accepted as complete. If they meet the criteria then we accept it as complete. It does not mean that after the application is accepted as complete that someone can't in the first instance say I have looked it over and I'm not sure you need a special exception. One thing to think about is do we feel this is the right application and do we want to address that first.

L. LaCourse stated in Section 27 A2 make a note to amend Page 21 to read 25' from the Right of Way line of any street or highway, add a comma after line and remove the word "of" and say 25' from the right of way line, any street or highway. There was continued discussion that requires clarification and advice will be sought from Attorney Sessler.

C. Minutes: S. Miller voted to accept the minutes of February 7, 2013 as presented. The motion was seconded and all agreed with P. Monziona abstaining.

D. Correspondence: None

The next meeting will be held on April 4, 2013 at 7:00pm.

A motion was made by P. Larochelle to adjourn and was seconded by P. Monziona with all in favor.

Meeting adjourned

8:45pm

Respectfully submitted,

Peggy Hawksley
Recording Secretary