

Approved by the ZBA 8-2-07

**Call to order** at 7:00 p.m. by Vice Chairman, Timothy Kinnon.

**Introduction of Board Members:** Timothy Kinnon-Chairman, Steve Hurst, Paul Monziona, Timothy Morgan, Marcella Perry, Monica Jerkins-Assistant Planner, and Carolyn Schaeffner-Recording Secretary.

**Appointment of Alternates:** None present to appoint.

**Statement of the Appeal Process**

The Chairman read a brief 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 that 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 an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

**Approval of Agenda**

**Motion** by T. Kinnon to amend the agenda to hear case Z07-06 first, then Z07-02, and then Z07-01. Second by M. Perry. Discussion: P. Monziona noted with regard to case Z07-06 are personal friends and his office has represented them in various legal matter for a number of years long prior to his ever being a member of the ZBA. In fact, his office is representing them with regard to the presentation of this matter. His office does not typically engage in land use matters and do not receive clients in any way because of his position on this board. Due to those facts he is recusing himself from this matter concerning application for Z07-06. Timothy Morgan will similarly recuse himself, as he is associated with the firm and the attorney presenting this same case. No further discussion. Vote unanimous.

**The applicant has requested the following case to be continued to the June 7, 2007 hearing.**

<b>Case Z06-38</b> <b>Corinne Claunch</b> Continued from the April 5, 207 hearing.	<b>Map 23, Lot 3</b>	<b>Special Exception</b> <b>41 Rustic Shores Road</b>
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<b>Case Z06-39</b> <b>Corinne Claunch</b> Continued from the April 5, 207 hearing.	<b>Map 23, Lot 3</b>	<b>Variance</b> <b>41 Rustic Shores Road</b>
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<b>Case Z07-06</b>	<b>Map 51, Lot 71</b>	<b>Variance</b>
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**Stephen Rogers**

**86 Route 11D**

Continued from the April 5, 2007 hearing.

T. Kinnon stated the package received in the Planning Office on May 2, 2007 is quite substantial and he personally has not had an opportunity to completely review it. Also stated that if the applicant wants this to be a part of the record he does not feel comfortable having this delivered at such late notice.

M. Perry noted she has had an opportunity to read it but not to go out to the property and feels the same as Mr. Kinnon.

S. Hurst noted that he has not had an opportunity to review the documents or view the property.

T. Kinnon also noted is there are only three members, although this is a quorum and legally can move forward with this case, the applicant should be aware that it would take an affirmative vote of all three members in order for this to pass. More importantly is the lateness of receiving this package and proper review of the documents has not be able to take place on the part of the members that are eligible to act on this application.

**Motion** by M. Perry to not accept the application for Case Z07-06 at this time and continue this case to the June 7, 2007 meeting if the applicant so chooses. Second by T. Kinnon. No discussion. Vote unanimous.

T. Morgan and P. Monziona resumed their seats on the Board.

**Case Z07-02**  
**C & D Realty Trust**

**Map 14, 20**

**Variance**  
**East Side Drive**

Continued from the April 5, 2007 hearing.

This case has been accepted.

Present for this case: Dan Weldon.

Proposed 8 lot subdivision on East Side Drive and would like to create a conservation lot. This conservation lot did not have the required amount of frontage. They have 35 ft on what will eventually be a town road. Noted the concern last time regarding taxation, non-payment of taxes on conservation lot, ownership issues, and usage issues. Mr. Weldon suggested making this conservation lot part of one lot or divide it up. At the Planning Board meeting of April 24, 2007, he stated they were disappointed that this was not going to be conservation. Stated their feeling that this was the direction the town would like to go. There is undeveloped land around this subdivision and once developed hope there would be additional green space attached to this and eventually make a common green way. They agreed with the Planning Board they would come back and address some of the issues. With the issue of taxation – if this is in a homeowner association and these taxes were not paid, the town would take this back. There are currently some subdivision in this situation and the town did take over these areas. It was suggested to have each of the 8 lots assigned a 1/8 interest in the common area and that will get attached to their

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individual tax bills. If they default on the conservation portion they default of their home tax bill. Ownership will be in the homeowners association to maintain the road until it is accepted by the town.

P. Monziona asked what the required footage from which they are seeking the variance.

D. Weldon noted 150 ft. There is no distinction between a conservation lot and a building lot for required footage.

P. Monziona asked if this is passed tonight do they still have to go back to the Planning Board for approval. Tonight they are simply seeking a variance for the frontage required to have 35 ft instead of 150 ft and get around the regulation to create the lot.

D. Weldon noted yes. They are schedule to go back before the Planning Board May 15, 2007.

M. Perry asked if would be a stand alone lot.

D. Weldon noted yes and with 1/8 ownership of each lot of this conservation lot.

T. Morgan asked about the 1/8 ownership. When the road becomes a town road and the homeowners association is no longer necessary there will still be ownership in the property by the residents by virtue of having a 1/8 undivided interest.

D. Weldon confirmed that is correct.

T. Kinnon asked about the restrictions to prevent from building anything on this lot.

D. Weldon stated this is a legal question that he is not exactly sure of. He assumes that the conservation easement itself would prevent it from being a buildable lot. It's not being created as a buildable lot.

M. Jerkins clarified that the subdivision regulations do not provide a distinction for conservation lots. The conservation easement would make it a non-buildable lot.

T. Kinnon asked who is responsible for enforcing that this lot remains non-buildable.

D. Weldon stated there will be covenants recorded to go along with this easement.

T. Kinnon concerned that the town of Alton will not enforce easement restrictions.

P. Monziona asked if their will be a restrictive covenant in the deed that will run with that land and this restrictive covenant will prohibit the use of the lot for any other use than a conservation use.

D. Weldon noted that is the intent.

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P. Monzione asked about the conservation lot size.

D. Weldon noted 4.3966 acres.

T. Morgan asked if there would be an easement holder. Noted it has been called a conservation easement but also restrictive covenants.

D. Weldon noted the whole lot will be under a conservation easement.

T. Morgan asked to whom is the easement deeded.

D. Weldon believes it would be to the homeowners association.

T. Morgan having difficulty understanding that aspect of the ownership of the easement and the consequence of enforcement and stewardship of the easement.

M. Perry noted these questions were brought up before and hoped the applicant would be here tonight with answers to these questions. Would like to know what the specific covenants will be.

D. Weldon thought he was here tonight to ask for the lot and the variance at the request of the Planning Board and the uses would be discussed with them.

T. Kinnon noted he asked the same questions the last time and was hoping to see some verbage that would state exactly what the restrictions were going to be on that lot. Who will hold the covenant, if it was going to be divided among the 8 lots. There is nothing in writing. Essentially what they are doing tonight is, if approved, are creating a buildable lot. It would be buildable until they the applicant goes to the Planning Board and they put the restrictions on this lot unless they are put on there tonight.

P. Monzione would like to point out that as they go through the worksheet in determining whether the variance should be granted or not, the issues are the variance will or will not be contrary to the public interest, the request is or is not in harmony with the spirit of the Zoning Ordinance, Master Plan, etc. In order to make a determination feels it is important to know exactly what the use of that lot is going to be, for purposes of the variance requested.

D. Weldon asked M. Jerkins if the Board has a copy of their conservation easement.

Steve Kosusko stated it was his understanding there were restrictive covenants and a conservation easement drawn up for this plan which he has a copy and thought this was reviewed by the Planning Board and Town attorney. Noted there are restrictions in the document to prevent this from being built upon.

M. Jerkins not sure if this is actually in the original file.

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S. Kosusko noted this is dated December 6, 2006.

D. Weldon stated he wants to make sure the Board knows they are trying to make this a green lot and he is open to any suggestions.

T. Kinnon appreciates this but also wants Mr. Weldon to know they are not trying to be difficult. Concern of the monitoring these conservations lots and that they are protected. Concern of the enforcement of the easement.

M. Perry noted this version still refers to the lot as Lot 4.

S. Kosusko agreed and this was before meeting with the Planning Board and applying their suggestions.

P. Monziona would like to see the restrictions have the verbiage that would provide protection for each individual owner to enforce the conservation use and enforce the restrictive covenants.

D. Weldon noted it is stated on the plan as a non-buildable lot.

T. Kinnon noted again that his concern that this town does not enforce easements. Noted this is not the problem of the applicant but needs to strongly consider.

M. Jerkins wanted to add about enforcement issues, when a building permit is applied for then anything such as easements, restrictions on the land are supposed to check before the permit is issued. So that in and of itself would a form of enforcement.

S. Kosusko noted that item number 8 talks about who has the rights to enforce the covenants and it is the individual lot owners and the homeowners association.

T. Kinnon noted the language in there to allow a party seeking the enforcement to collect all expenses which is a deterrent to seek legal action to enforce a covenant or an easement.

T. Hoopes a member of the Planning Board and Conservation Commission. Not speaking for the Planning Board because this Board cannot speak to the ZBA. By speaking tonight he will step down from this case. Noted the Planning Board discussed the circumstances and in general felt very comfortable with there the subdivision was going. The Planning Board does like the idea of green space and this space is the steepest part of the land. They are delighted they do not want to build on it. In talking with the tax assessor he had this suggestion of undivided shares that are assigned to the house lot. When the house is sold and bought the 1/8 share travels with it. You cannot exchange share in the common lot. Feels the word easement is not appropriate. An easement has to be assigned to somebody. Would like to see this as an restricted deed. If the ZBA chooses to approve this he would like to see condition on the approval that would include items such as: some kind of restriction on the amount of cutting, provision for trails, no vehicles-walking access only and definitely described as a non-developable-non-buildable lot. Wanted to note that conservation easements are monitored on a regular basis and felt Mr. Kinnon's statement was

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unfair that easements have been built upon. There is only one that has been and it was the result of a judge and court hearing. Conservation easements are held by the Conservation Commission and are monitored on a very regular basis. Added restrictions in the deed are going to be the best way to ensure the Board's decisions.

Justine Gengras agreed with Mr. Hoopes comments. Added there is a letter of comments from the Conservation Commission. Hopefully, in the future the town will amend its regulations to provide a mandate for the shape of the lot, the configuration, the amount of required frontage for a conservation lot. There are only requirements for buildable/developable lots. Would like to also avoid the use of the term "easement" unless there is a going to be a party to hold the easement. Would like to use the term common lot or conservation lot. She does like the wording in the proposed covenant restrictions.

P. Monziona commented that if the variance is granted the Board should come up with language that references restrictions and how the restrictions should be left to the applicant through the applicant's attorney to come up with language than then satisfies the Planning Board. He added that both easement and restrictive covenants would be appropriate because the intent is to give a common ownership interest to each of the 8 lots that are part of the same development. Not only would there be restrictive covenants in the deed that prohibit what can be done on the lot but any member, who also owns an interest in common would also be given an easement to enforce it.

J. Gengras noted some elements in section 6 of the draft could be reworded nicely for their purposes.

Open to public input in favor of the application.  
None seen or heard.

Open to the public in opposition of the application.  
None seen or heard.

Public input closed.

General comments from the Board.

M. Jerkins noted the covenant restrictions were sent directly to the Town attorney and only has documentation of this transactions. She will place this document in the file tonight.

T. Kinnon noted the covenant restrictions document helped to answer many questions especially regarding enforcement in paragraph 8. Noted it should be called a conservation lot not a conservation easement.

P. Monziona noted there is a letter in the materials from a Richard Saunders, an abutter who states he is opposed to the variance. It does not provide explanation as to why or a basis for the opposition.

T. Morgan feels Mr. Hoopes' comments were well taken. Feels Mr. Monziona's proposal regarding the restrictions and easements running to each of the individual owners is a good way to enforce the

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objectives. He is in favor of moving forward with this and adding these kinds of restrictions to the final approval.

#### USE VARIANCE WORKSHEET

After reviewing the petition and after hearing all of the evidence and by taking into consideration personal knowledge of the property in question, the Town of Alton Zoning Board of Adjustment has determined the following:

Criteria	Statement
Public Interest	The variance will not be contrary to the public interest. ALL AGREE.
Spirit of the Ordinance	The request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. ALL AGREE.
Substantial Justice	By granting the variance, substantial justice will be done. ALL AGREE.
Value of Surrounding Properties	The request will not diminish the value of the surrounding properties. ALL AGREE
Hardship – Boccia	<ol style="list-style-type: none"><li>1. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, and</li><li>2. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. ALL AGREE</li></ol>

Based on the above analysis, special conditions do exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

**Motion** by P. Monziona to grant the application for Z07-02 on the condition that the lot in question be limited in its use to non vehicle access for common everyday use, non buildable, non developable and that appropriate language and restrictions be put in the deeds by way of restrictive covenants and/or easements all to the satisfaction of the Planning Board. Second by T. Morgan Amendment: some form of section 8 of the covenant restrictions be incorporated in the language to each property owner deed. No further discussion. Vote unanimous.

**Case Z07-01**  
**John and Paula Hughes**  
Continued from the April 5, 2007 hearing.

**Map 39, Lot 28**

**Variance**  
**453 East Side Drive**

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This application has been accepted.

Noted the applicant was asked to have elevations shown on the plans and for the house and proposed garage location to be located and Mr. Hughes is here tonight with his surveyor. M. Jerkins included in the packet to the Board the updated plan.

Present for this case: George Chrisenton, John Hughes.

Property is located on Route 28A just above Cascade Brook on the East side of the lake. This also borders on the lot of Cascade Terrance. This is an access to the beach and docks. It is used not as a street but more a parking area. An association owns this parcel of land. The property is very steep. The grade is approximately 40%. The back of the lot will be up about 16 ft off the top of the foundation without the variance. Proposing to move it down so one end will be 17 feet off and 5 feet off on the left hand side. Access to this area is used only for parking. It is a dead end.

T. Kinnon asked what was the applicant's intent for orientating the garage such as it is on the property.

J. Hughes this was placed for easier access off the street. If it was straight it would be hard to get in and out of it.

G. Chrisenton noted it gives a straight shot into the garage.

P. Monziona asked for clarification on the plans as he was not present at the last presentation.

S Hurst stated he visited the site and found the stakes. He asked what type of construction materials will be used due to the steepness of the site.

J. Hughes stated it would be poured concrete foundation with a wood structure with pitched roof.

S. Hurst asked if the Association was in favor of this project.

J. Hughes stated they were in agreement.

T. Morgan asked about the surrounding properties.

G. Chrisenton indicated these properties on the plans.

P. Monziona confirmed that if he placed this proposed garage as indicated on the plans by a dotted line, he would not need the variance. But because of the character of this land he needs to turn this proposed garage and thus needing a variance.

G. Chrisenton confirmed.



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P. Monziona asked how this lot did in the recent heavy rain.

J. Hughes stated there was no wash out and is pretty dry.

S. Hurst asked if the Association put anything in writing that there was no opposition.

J. Hughes indicated no, his direct neighbor is the president of the Association, Jack Treader.

M. Jerkins noted that no correspondence has been received in favor or opposed to this project and abutter notices did go out.

S. Hurst feels it would be in the best interest of the Association to put something in writing.

M. Jerkins noted they have had the opportunity express opposition.

T. Kinnon expressed concern for emergency vehicle access.

J. Hughes stated he feels there is plenty of room for emergency vehicles.

T. Kinnon noted there are no concerns noted by the Fire Chief.

Open to public input in favor of this application

None seen or heard.

Open to public input in opposition of this application

None seen or heard.

Closed public input.

#### AREA VARIANCE WORKSHEET

After reviewing the petition and after hearing all of the evidence and by taking into consideration personal knowledge of the property in question, the Town of Alton Zoning Board of Adjustment has determined the following:

Criteria	Statement
Public Interest	The variance will not be contrary to the public interest. ALL AGREE.
Spirit of the Ordinance	The request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. ALL AGREE.
Substantial Justice	By granting the variance, substantial justice will be done. ALL AGREE.

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Value of Surrounding Properties      The request will not diminish the value of the surrounding properties. ALL AGREE.

Hardship – Boccia                      1. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, and  
2. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. ALL AGREE.

Summary statement (no vote needed):

Based on the above analysis, special conditions do exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

**Motion** by P. Monziona that case Z0-01 that the area variance being sought be granted. Second by S. Hurst. No discussion. Vote unanimous.

#### **OTHER BUSINESS**

1. ZBA Application – M. Jerkins noted changes made that were talked about at the last meeting. In particular, most were spell-check issues. The equitable dimension waiver was spaced differently and directions were re-worded.

**Motion** by P. Monziona to accept the post application as drafted. Second by T. Morgan. No discussion. Vote unanimous.

2. Approval of Minutes – none to approve at this time.

3. Old Business – discussion of the storage units being built by Precious Gardens on Route 11. Required vegetative buffer no longer exists and it looks like one lot. Also discussion on follow-up of sign on Route 28 that was placed in a different location as approved for. M. Jerkins noted that DOT was involved but she does not know the status. T. Kinnon expressed concern again on the town enforcing decisions made by the ZBA and Planning Board.

4. New Business – none.

5. Correspondence – none.

**Motion** by T. Morgan to adjourn. Second by P. Monziona. No discussion. Vote unanimous.

Respectfully submitted,  
Carolyn Schaeffner, Recording Secretary