

Approved by the board 11-1-07

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Call to order at 7:00 p.m. by Tim Kinnon

Introduction of Board Members Marcella Perry, Tim Morgan, Timothy Kinnon, Paul Monziona, Stephen Hurst and David Schaeffner

Appointment of Alternates no need for alternates at this time

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 this 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 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 Monica Jerkins, Planning Technician, stated the following:
The following cases have been withdrawn per request of the applicant:

Case # Z07-07 Maureen & Thomas Fitzgerald (owner)	Map 9, Lot 57	Area Variance 50 New Durham Road
Application submitted by Tony D'Orazio of Fiddlehead Farms Market Place to obtain a variance from Alton Zoning Ordinance Article 200, Definitions, General Store which states that a 'General Store' is a building of less than 2,000 sq. ft. where the applicant proposes to construct a building housing a general store of approximately 10,000 sq. ft. The property is located within the Residential Rural Zone.		

Case # Z06-38 Corinne Claunch	Map 23, Lot 3	Special Exception 41 Rustic Shores Road
Continued from the May 3, 2007 hearing.		

Case # Z06-39 Corinne Claunch	Map 23, Lot 3	Variance 41 Rustic Shores Road
Continued from the May 3, 2007 hearing.		

Motion by M. Perry to accept the agenda as presented. Motion seconded by T. Kinnon.
Motion passed with unanimous voice vote.

Case Z07-06 Stephen Rogers	Map 51, Lot 71	Variance 86 Route 11D
Continued from the May 3, 2007 hearing.		

Paul Monziona recused himself from the above referenced case, citing both personal and professional relationships with the applicant. Tim Morgan also recused himself from the above

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referenced case citing a professional connection with the applicant.

Tim Kinnon appointed David Schaeffner to take the place of regular Board member, P. Monziona, leaving one vacancy on the Board.

T. Kinnon briefly explained the reasons for continuing the previous hearing.

Attorney Rick Ward represents Mr. Rogers. The surveyor is also present. Mr. Rogers owns the Bayside Inn, which is across the street from the subject property. The subject property has been operated in conjunction with the Bayside Inn since 1953. There are currently three dilapidated cabin structures. At present, the cabin structures and property are being used as storage space for the Inn. Mr. Rogers proposes to make improvements to the subject parcel by removing the cabins and replacing them with a four-unit multi-family structure with a barn for storage. The Cassidys and John Tibbs, direct abutters, have submitted letters of support. Ed Cutting has also submitted a letter in support of the application.

Mr. Rogers would like to expand his existing facility. He has a history of improving the neighborhood and beautifying the neighborhood through landscaping and renovations. His project should improve the neighborhood as his past projects have. The proposed project is compatible with the surrounding neighborhood, a list of other similar properties is provided with the application.

S. Hurst asked if the proposed building would interfere with any abutter's views. The building is not in the way of anyone's view of the lake.

M. Perry stated that the building, she referred to as an apartment house, does not compare to the other properties listed as comparison because they are tourist related, recreational properties and she feels this is more a permanent living quarters kin to an apartment building. Attorney Ward replied that these units would be used in conjunction with the Bayside in and eventually sold as condominium units. S. Rogers mentioned that four or five of the listed comparable properties are used year round and are multi-family; The King Birch, Boulder Lodge, Lakehurst Cottages, the Shibley residences. S. Rogers stated this is not an apartment house. It is a four-unit structure to be used in conjunction with the Bayside Inn.

T. Kinnon asked if the units would be individually owned. S. Rogers stated that in time it was a possibility, but at the moment, current plans are only to expand his existing business.

M. Perry stated that the Lakeshore Residential Zone is a very restrictive zone and she is concerned over setting a precedent to allow multi-family structures all over the Lakeshore Zone. Attorney Ward stated that he felt the historic use of the property and its association with the Bayside Inn would preclude it from being a precedent setter.

T. Kinnon opened the discussion to the public.

M. Jerkins asked to present a statement taken by telephone by Mr. Pete Shibley earlier that evening since he was unable to attend this evening. T. Kinnon stated that he did not feel a statement taken over the phone should be admitted into the record. If Mr. Shibley wanted to express himself to the Board then he should have submitted something in writing, not made a phone call to ask staff to take

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dictation. M. Jerkins stated that she believes he phoned due to an unexpected event that made him unable to attend this evening and in the interest of saving time, he called. T. Kinnon stated that this statement should not be admitted into record. M. Perry agreed. All sitting Board members agreed.

T. Kinnon asked for public input from those in favor of the project. Paul Darbyshire discussed sewage loading. State standards would depict the lot capable of supporting up to 25 bedrooms. Mr. Rogers is proposing 12 bedrooms. P. Darbyshire discussed other features of the property and its accommodating capacity for the proposed project.

John Tibbs, abutter, stated he does not have an issue with the project. Everything the Rogers have done to date has improved Rte 11D. He is a real estate professional and believes the area will be enhanced by this project.

Mark Cassidy, abutter, is in support of the proposal. The removal of the older buildings will make the area nicer. The Rogers do a good job maintaining their facility and he would expect the same from them with future endeavors.

Ms. Cassidy, abutter, used to stay at the Bayside Inn and now lives in the neighborhood. The building will not look like an apartment house because everything Mr. Rogers does is with class. The neighborhood will be beautiful.

Unidentified abutter, everything Mr. Rogers has done has been done with consideration to the neighbor's concerns. His projects have always enhanced the neighborhood and this project will be the same.

T. Kinnon asked for any other public input in favor of the application. Seeing none, he asked for public input in opposition to the application.

Attorney Jim Cassidy of Concord spoke on behalf of abutters, The Zdeny Woodbury Trust. Attorney Cassidy argued that the applicants have not met the test of unnecessary hardship. He stated that the test for unnecessary hardship is not based upon aesthetic improvements or beauty. Unnecessary hardship must pertain to the property itself. The property is zoned for single-family residence, which can be built on-site. Hardship often concerns topography. Attorney Cassidy expressed that the hardship that exists, if any, is a self-created hardship because the existing cabins were likely relocated to the subject parcel. There has been no evidence that there are unusual characteristics about the land that create a hardship. Since the applicant can make use of the property within the regulations, then that is what should be done. Attorney Cassidy suggested that aesthetics and economic gain would not be considered hardship by the court. He cited *Severance versus the Town of Epsom*. He compared the situations and the criteria.

Attorney Cassidy continued his presentation in opposition by stating that 12 bedrooms in four units would mean more cars and traffic. The lake is a treasure that should be protected. Zoning Ordinances are designed to do that. Finally, because the applicant cannot meet the hardship criteria, it is the abutter's position that the application for a variance should be denied. Attorney Cassidy submitted a letter for the file.

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Abutter, Alan Taylor, presented a letter to the file and then spoke briefly to outline his concerns. Mr. Taylor stated that the history of the property provided by the applicant was incorrect. His family has owned the abutting property since the 1920's. Mr. Taylor claimed that the subject parcel was not historically used in conjunction with the hotel. In fact, Mr. Rogers only acquired the site in 2001. He explained attachments to his letter to support his explanation. The cabins on the lot were used in the past as storage spaces and the third cabin was not originally a part of the subject parcel, and could not have been used in conjunction with the Bayside Inn for 50 years as inferred by the application. The cabin(s) have never been lived in.

Mr. Taylor continued to state that the existing uses in the area of the Bayside Inn that are grandfathered are not multi-family uses, but rather motels. Boulder Lodge is a privately owned home now. Mr. Taylor stated that owners of homes in the Lakeshore Residential Zone feel protected by the Zoning Regulations. Increasing the density allowed in the zone by creating multi-family structures like condominiums will change the character of the town. He requested that the Board deny the application.

Attorney Michael Donovan from Concord representing abutter Mr. Taylor spoke on the law as it applies to variances. He stated that personal circumstances are not enough to grant a variance. There must be something unusual about the lot that makes it different than the other lots in the area. At least two of the five variance criteria cannot be met; most obvious the hardship criteria. The other is that the variance cannot be inconsistent with the spirit and intent of the Master Plan. The applicant would have to show that the prohibition of multi-unit structures in the Lakeshore Residential Zone unreasonably interferes with the reasonable use of this property. Attorney Donovan compared the *Simplex* case to the present fact set. Multi-family structures are different than motor lodges or seasonal rental cabins.

Attorney Donovan stated that the Lakeshore Residential Zone is the most restrictive zone and is designed to protect the lakeshore environment, water quality and the single-family nature. Granting this variance would set a precedent for other multi-unit structures to be built in this zone. Attorney Donovan urged the Board to deny the variance.

T. Kinnon asked if there was any further input in opposition. Seeing none, he offered the applicant an opportunity for rebuttal.

Attorney Ward addressed the concept that granting this variance would open the door to other dense development. He stated that the law of variances was addressed in his memo on pages 5-7. He stated that the historical use of the subject parcel is what sets it apart from others in the area and would keep the granting of a variance from setting precedent. Attorney Ward asked Mr. Rogers to discuss the historical use of the subject parcel.

Mr. Rogers explained that the third shed was moved there. The names of the two buildings were "the Boathouse" and "The Little House." Both have been used as rentals at one time or another in conjunction with the Bayside Inn. Neither of the people opposing this project are direct abutters of the subject property. Their line of site or views will not in any way be impacted by this proposal. Septic and water has been on the subject parcel for over 50 years. Mr. Rogers father put the water and septic in. Mr. Rogers stated that he had the records to back up the historical use of the property.

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The subject parcel has always been used as the Bayside Inn.

Mr. Rogers stated that traffic impact would be negligible given that he is running a resort and has in the past, hosted functions of up to 250 people. Traffic on 11D would remain basically the same as it always has been. His resort is also open year round.

T. Kinnon stated that his primary concern is that the proposal seems to be for a multi-unit condominium rather than an expansion of the resort.

S. Rogers stated that he would like the units to be built as a condominium so he would have the option to sell the individual units, but at present he would like to rent them as part of the Bayside Inn.

T. Kinnon expressed that a variance runs with the land and therefore they have to consider who may own it in the future. Lodging units and beds & breakfast are allowed in the Lakeshore Residential Zone where multi-family buildings are not.

Attorney Donovan explained that in 2002 Mr. Macphee, who at that time owned most of the subject parcel, tried to put rental cottages on this property but then withdrew his application. He explained this is inconsistent with the history that was provided by the applicant.

The Board discussed ownership issues. S. Rogers reiterated that the building would be used in conjunction with the Bayside Inn.

T. Kinnon closed the public input portion of the meeting.

M. Perry stated that although the applicant has done a lot of aesthetically pleasing work in the area, but she feels that the Zoning Ordinance is what should be focused on. The Lakeshore Residential Zone is very restrictive for a reason. T. Kinnon agreed stating that because the application was being proposed as a multi-family structure, which is not allowed at all in the zone, he does not feel comfortable.

M. Perry stated that the situation goes beyond affecting just abutters and into a much broader general public in that zone and feels approval would affect other cases down the line.

S. Hurst stated that he clearly does not see a hardship at this point and it is a very restrictive zone.

D. Schaeffner stated that single-family homes have already been constructed across the street, which is an allowable use in the zone. M. Perry agreed, the rebuild of single-family structures has been allowed in the same footprint. This application does not do that, but asks for removal and expansion further back on the property into a completely different style and type of structure. T. Kinnon does not feel comfortable putting a "multi-family" structure in the Lakeshore Residential Zone.

The Board began the checklist.

M. Perry – the variance will be contrary to the public interest because this is such a restrictive zone. The public has shown opposition. All agreed.

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T. Kinnon – the request is not 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 in which it is proposed. The request is for a multi-family dwelling, which is prohibited by the Zoning Ordinance in that zone. In that particular area, the new structure likely would be an enhancement to the lot and the neighborhood, and would definitely look better. However, the number of bedrooms is concerning as well as the fact that multi-family dwellings are not allowed in this zone. S. Hurst added that the Lakeshore Residential Zone must be protected. D. Schaeffner stated that this is a sensitive area. M. Perry stated that the residential flavor of the town and promoting tourism, particularly in this zone is the intent of the Master Plan. Diminishing the lakefront property is not the intent. All agreed.

S. Hurst – by granting the variance, substantial justice will not be done. The Zoning Ordinance adequately protects in this area. All agreed.

D. Schaeffner – the request will diminish the value of the surrounding properties because you will not have the intact neighborhood that you would otherwise. The hotel is grandfathered; Mr. Rogers has done a nice job. M. Perry agreed. T. Kinnon stated that he does not feel that it would diminish the value. The structure, if anything, would enhance the values and improve the area aesthetically; however there is no evidence presented either way. S. Hurst stated that he does not feel that the proposal would diminish the value of surrounding properties.

M. Perry – the zoning restriction as applied does not interfere with the landowner's reasonable use of the property considering the unique setting of the property in its environment. Mr. Rogers has full use of the property within the perimeters of what is allowed by the Zoning Ordinance.

M. Perry – there is a fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property. The variance will injure the public and private rights of others. All agreed.

T. Kinnon – based on the above analysis, special conditions do not exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

T. Kinnon – Motion to deny case Z07-06 as presented. S. Hurst seconded the motion. The motion passed with all in favor.

T. Kinnon called for a five-minute recess.

Case # Z07-08

Map 50, Lot 7

Area Variance

Margaret N. Fontes Family Trust

31 Rte 11D

Application submitted by Peggy L. Trivilino, Power of Attorney for the Margaret N. Fontes Living Trust to obtain an area variance from Alton Zoning Ordinance Article 300, Section 327, Setback Requirements to allow for an expansion of an existing deck into the setback. The property is located within the Lakeshore Residential Zone.

M. Fontes described her property and discussed her proposal to expand her deck. She would like to expand her deck to 12' x12'. The abutters on either side have stockade fences. The expansion would cause the deck to come within 3 feet of the fence on one side and 6 or 8 feet of the fence on the other. The deck will enhance the utility of the cottage. The deck will be 50 to 60 feet from the

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water.

P. Monziona asked about the height of the supports for the porch since the lot slopes to the water. M. Fontes responded that the supports would be 4 and half feet at the most.

M. Perry stated that she would still have to get a building permit, so that the deck would be built to code.

T. Kinnon opened the meeting up to the public. Seeing no public input, he closed the public portion of the meeting. The Board went into deliberations.

M. Perry – the variance will not be contrary to the public interest. The deck will not be seen by anyone and will likely enhance the property. T. Morgan stated that, by the sketch, the encroachment does not seem to be any greater than what already exists. All agreed.

T. Morgan – the request is in harmony with the spirit of the Zoning Ordinance and intent of the master Plan, and the convenience, health, safety and character of the district in which it is proposed. The Zoning Ordinance is intended to reduce the encroachment on abutting properties, and in this instance it does do that because the encroachment is not greater. All agreed.

T. Kinnon – by granting the variance, substantial justice will be done. All agreed.

P. Monziona – the request will not diminish the value of surrounding properties. There is no evidence to suggest property values will be affected. All agreed.

S. Hurst – and area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonable for the applicant to pursue other than an area variance. P. Monziona stated that the size and shape of this lot create the hardship. All agreed.

T. Kinnon – based on the above analysis, special conditions do exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship.

M. Perry – Motion to grant the area variance for Margaret Fontes, Case # Z07-08. T. Morgan seconded the motion. The motion passed with all in favor.

Case # Z07-09

Map 38, Lot 22

Special Exception

NHDOT (current owner)

319 Mount Major Highway

Application submitted by Andrew's Marine Service who is under purchase contract for the above referenced parcel currently owned by the State of NH Department of Transportation, Right-of-Way Bureau, to obtain a Special Exception as required by Alton Zoning Ordinance Article 400, Section 401, Table of Uses, Retail Business and Service, Subsection 12, Boat Storage to allow a boat storage facility within the Rural Zone.

S. Hurst recused himself. T. Kinnon appointed D. Schaeffner to replace S. Hurst.

Andrew Kierstead and his wife Sharon, owners of Andrew's Marine Service in Minge Cove, presented their proposal. They are currently under a purchase and sales agreement with NHDOT for the

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subject parcel. They would like to erect a storage building on the parcel. They currently lease a storage facility in Milton and would like to have a facility closer. Current proposal is for a 100' x 100' footprint with a 35' eave height for rack storage. Would like to get approximately 80 boats stored. This would require a four level rack.

T. Kinnon asked if there were plans for a fire suppression system in the building. A. Kierstead stated that at this point they have not looked into the permitting requirements, only the general size of the building.

A. Keirstead – We haven't looked at that as of yet.

P. Monziona asked about the setbacks on the drawing submitted. A. Kierstead stated that the building is proposed within all of the setbacks. Plantings along the road are planned to screen the structure from the road.

T. Morgan asked about who the abutters are. A. Kierstead stated that Stephen Bell is directly adjacent with Precious Gardens. Edgar Russell and Walter C. Young are the other direct abutters.

M. Perry asked if the driveway permit application had already been submitted. A. Kierstead stated that they were working on the driveway permit. Employees of the marina will be responsible for transport to and from the property and primarily activity will occur within the building. No winterization will take place on site. No valet parking would happen. The building will be fully enclosed.

P. Monziona asked for clarification on the strip of land between the property line and the edge of the highway. He would like to know that the visual impact would be lessened by planting a vegetative screen to buffer the building from the road. A. Kierstead confirmed that this was the proposal.

M. Perry asked if the lighting would be down lighting. A. Kierstead stated that the only lighting he is considering would be motion sensitive for the doors. No other lighting should be necessary.

D. Schaeffner asked if there would be any gates to the property. A. Kierstead stated that there are no plans for gates at this time. The building will be locked and secured and there will be no windows.

T. Kinnon asked if the fire chief, present in the audience, would like to address his concerns.

Chief Alan Johnson asked about access to the building. He would like fire vehicles and apparatus to be able to maneuver around the back of the building. The entrances to the property should be constructed to allow access by fire trucks. He would like to see a fire alarm system installed in the building. The system would only have to be a detection system because the building will be unheated. He asked what the construction would be. A. Kierstead stated it would be steel.

Chief Johnson asked if there would be outside storage. Any outside storage would need to be in a way that would not obstruct access to the building.

T. Kinnon opened the hearing up to the public asking if anyone would like to speak in favor of the application.

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Stephen Bell, abutter and owner of Precious Gardens, stated that he does not have a problem with the proposal.

T. Kinnon asked if there was anyone else who would like to speak in favor of the application. Seeing none, he asked if anyone wished to speak against the application. Seeing none, he closed the public input portion of the hearing.

The Board discussed the driveway permitting process with the applicant. The Board discussed traffic concerns. Only employees of the marina trained to drive large trucks would be entering and exiting the property on a regular basis. M. Perry stated that the sight distance was very good in this area. The state permitting process will address any of those issues. The applicant will also have to go to the Planning Board for site plan review.

T. Kinnon asked that a stipulation be placed on the project that there be no valet storage.

T. Morgan – a plat has been accepted by the Planner. All agreed.

T. Kinnon – the specific site is an appropriate location for the use. Due to the proximity of the marina and the visibility on the highway is good in both directions the site is appropriate. P. Monziona stated that the site is located far enough away from the downtown area to not be a nuisance. The plantings shown on the plat should be adhered to. M. Perry stated that other storage facilities and businesses are located in the area. All agreed.

P. Monziona – Factual evidence is not found that the property values in the district will be reduced due to incompatible uses. There has been no evidence presented to the contrary. The surrounding properties and their uses are not incompatible. All agreed.

D. Schaeffner – there is no valid objection from abutters based on demonstrated fact. No abutters were present to object. All agreed.

M. Perry – 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. There is no pedestrian traffic on that portion of Rte 11. Two access points will be constructed and will have to go through the NHDOT permitting process to be allowed. T. Kinnon added that it is conceivable that DOT will only allow one entrance. All agreed.

T. Morgan – adequate and appropriate facilities and utilities will be provided to ensure proper operation of the proposed use of the structure. There are not a lot of facilities needed to support this building. T. Morgan asked that the fire chief's concerns about having a fire detection system be installed. M. Perry stated that there should also be adequate space for access to the backside of the property. All agreed.

T. Kinnon – there is adequate area for safe and sanitary sewage disposal, however that does not apply to this particular structure. T. Morgan asked about oil spills and the applicant explained how they would deal with any spills. All agreed.

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P. Monzione – the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. Boat storage is specifically listed in section 401 as an allowable use with a special exception. All agreed.

P. Monzione made a motion to grant the special exception for case # Z07-09 with the specific provision that the building be constructed in accordance with the plat that has been presented and that the construction of the building satisfy the conditions and concerns of the Alton Fire Department. Also, that there be no valet type storage at this facility. M. Perry seconded the motion. The Motion passed with all in favor.

OTHER BUSINESS:

1. ZBA Application
2. Approval of Minutes:
3. Old Business:
4. New Business:
5. Correspondence:

M. Jerkins stated that there are three sets of minutes to approve.

April 5, 2007 Worksession: no changes. Motion by T. Morgan to approve the minutes as presented. The Motion was seconded by P. Monzione. Motion passed with three in favor and two abstentions.

April 5, 2007 Hearing: no changes. Motion by T. Morgan to approve the minutes of the April 5 hearing as presented. The Motion was seconded by T. Kinnon. Motion passed with all in favor.

May 3, 2007 Hearing: no changes. Motion by M. Perry to approve the minutes of the May 3 hearing as presented. S. Hurst seconded the Motion. Motion passed with all in favor.

M. Jerkins presented the updated application. T. Morgan motioned to adopt the new ZBA application form. M. Perry seconded the motion. The Motion passed with all in favor.

T. Kinnon expressed appreciation for the Staff's enforcement of late submittals. M. Jerkins stated that the Board might want to consider the consequences of receiving an abundance of information on the night of the meeting from abutters. The Board may want to consider continuing the hearing to ensure adequate time to review the new information. T. Morgan suggested adding a line to the abutter's notices that materials should be submitted prior to the hearing. P. Monzione stated that this should be considered on a case-by-case basis.

M. Perry provided an update on the Planner position. She stated that they are prepared to offer the job to a candidate.

T. Morgan motioned to adjourn. T. Kinnon seconded the motion. Motion passed with all in favor.

Adjournment

Tim Kinnon, Chairman