

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
July 11, 2013
Approved as amended 8/1/13**

I. CALL TO ORDER

Paul Monziona called the meeting to order at 7:00 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monziona, 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, Member
Lou LaCourse, Member
Steve Miller, Member

III. APPOINTMENT OF ALTERNATE

T. Morgan made a motion to appoint P. Larochelle as a member for this meeting. L. LaCourse seconded the motion which passed with four 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 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 has been or will be met.

V. APPROVAL OF THE AGENDA

S. Miller made a motion to approve the agenda as presented. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

VI. NEW APPLICATIONS

Case #Z13-10 William & Sheila Selfridge	Variance Map 15 Lot 21-2	8 Chestnut Cove Road
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William R. and Sheila A. Selfridge are requesting a variance to Article 300 Section 320.A.3 of the Zoning Ordinance to permit a change of one non-conforming use to another by replacing a recreational travel trailer with a manufactured home. The property is located in the Rural Zone.

J. Dever read the case into the record. The nonconformity in this case is that there is already an existing dwelling on the property.

William R. and Sheila A. Selfridge came forward to present their application.

The plat presented with the application is the subdivision plat from 1975 and has Ken Locke's name on it; there have been no changes to the configuration of the lot since that 1975 plan was produced. The Selfridges' purchased the property from Mr. Locke.

The members reviewed the application for completeness; concern was voiced that there was no drawing showing the existing or proposed dwellings in relation to setbacks. The applicant did submit a pencil sketch with the plan, but it does not show scale or exact location of the dwellings in relation to the setbacks. Mr. Selfridge stated that there is a septic plan, produced by Mr. Christensen, which was filed the town and would show all of the dimensions being asked for. P. Monziona explained that the Board is limited to the information submitted in the application. J. Dever had the building file with him; it does contain the septic plan showing the setback lines and the location of the dwellings. Copies of the relevant part of the drawing were made and distributed to the members. Mr. Selfridge asked if the members had been out to Chestnut Cove Road; P. Monziona answered that they have not been to this particular property, and that to do that would mean that a decision would not be made at this meeting, and that such meeting would have to be posted and conducted as a legal meeting.

S. Miller asked if the dimensions on the septic plan were to scale; J. Dever answered that they would be very close.

T. Morgan made a motion to accept the application as complete with the additional documentation. P. Laroche seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

The applicant explained that there is a trailer, still on wheels, that they want to take out. The original plan was to replace it with a manufactured home on a slab; now they are thinking they may want a modular home on a foundation.

P. Monziona asked for clarification to the reason for this variance; J. Dever explained that the nonconformity is because there are two dwellings on a lot that will only allow one. P. Monziona agreed; there are two dwellings and therefore a nonconforming use that the applicant wants to replace with another dwelling.

P. Monziona clarified through questioning which of the two dwellings on the lot is the trailer the applicant wants to remove and replace with another manufactured home. This would cause there to be two permanent dwellings on the lot, which would be in violation of the zoning ordinance. Mr. Selfridge explained that this is a large 5 acre lot on the corner of 28A and Chestnut Cove Road; the two dwellings are not close together. P. Monziona questioned whether the one large lot should be split into two separate lots, thereby leaving one home on each lot. After discussion, it was determined that a variance would still be required, as there is not sufficient frontage to support two separate lots in this zone.

Setbacks are sufficient as the dwellings are proposed. There are currently two septic systems on the lot; the one for the trailer is sized for two bedrooms. The proposed manufactured home would have two bedrooms. If a modular home is done, it will be on a foundation.

P. Monziona questioned exactly what is being requested. The applicant explained that at the beginning of the process, they were looking just to put in a manufactured home. Now, a month and a half later, they have had an opportunity to look at other options, including having a modular home put in. P. Monziona explained that before the variance could be granted, the applicant would have to be able to voice exactly what was being put in; if the variance were to be granted for a specific thing, and something else was done, the town could impose a Cease and Desist and compel the applicant to remove the dwelling. The application has to be specific as to what the applicant is requesting; if approved they would be bound by the constraints of the approval.

The application specifies a 980 square foot manufactured home on a slab; this is the only proposal where a builder has looked at the lot.

P. Monziona explained the option of a continuance; the applicant is afforded the opportunity to continue three times through the process without beginning over again and incurring additional fees. He explained that the Board would need to have specific information concerning what type of dwelling is going to be installed, and whether it will be on a slab or foundation. He explained that the more information provided by the applicant the better, as the determination will be based on the information in the application.

L. LaCourse asked whether it had ever been allowed in this zone to have two dwellings on a lot. J. Dever explained that it was allowed in this zone at one time; the travel trailer pre-dated the manufactured home currently on the lot. T. Morgan asked J. Dever to aid the applicants in assembling their information as well as honing their presentation. S. Miller questioned whether the applicant may be better served to go for a variance on the frontage issue and have the lot divided as opposed to what they are doing now. J. Dever explained that this decision would be up to the applicant; Mr. Selfridge explained that the taxes would be higher if they subdivide. P. Monziona clarified through questioning that the two dwellings were legal when they were put there and is therefore grandfathered; J. Dever agreed.

After discussion, the applicant decided to request a continuance to August 1, 2013, so they can continue to explore their options and decide which type of home they would like to put on the lot.

S. Miller made a motion to approve the request for continuance to August 1, 2013; P. Larochelle seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

VII. CONTINUED APPLICATIONS

Case #Z13-7 David A. and June B. Howell	Variance Map 69 Lot 15	25 Perkins Road
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On behalf of David A. and June B. Howell, Wes Whittier of Waters Edge Builders is requesting a variance for Article 300 Section 327 of the Zoning Ordinance. The existing use is a residential 2 bedroom home with septic system. The use will continue as it exists except there will be a new structure on the property removing the existing house from the 30 foot setback with only having 188 sq. ft. of deck projecting into the 30 ft. setback. The property is located in the Rural Zone.

P. Monziona read the case into the record. He explained that he knew the Howell's but had not seen them in many years, and that he does not feel the past association will influence his judgment; he chose not to recues.

Wes Whittier of Waters Edge Builders came forward to present.

The application was reviewed for completeness.

T. Morgan made a motion to accept the application as complete. S. Miller seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Mr. Whittier explained that the purpose of this variance is for a portion of the deck that will be in the setback after the existing home is removed and a new home is constructed. S. Miller asked how far into the setback the deck will protrude; Mr. Whittier stated that it will be a maximum of eight feet into the setback for a length of approximately 20 feet. This is encroaching into the 30' setback from the high water mark; this is a town setback. J. Dever measured the encroachment and agreed that it is no more than eight feet, and that the length is close to 30 feet. Board members and staff discussed the difference between the town setback of 30 feet and the DES setback of 50'. The state approvals have not been applied for yet; the applicant decided to make sure all of the issues were cleared with the town before they begin the state approval process.

S. Miller asked if the deck was going to be on a slab; Mr. Whittier answered that it will be on pilings.

S. Dever explained that it has been his experience with the state that approvals are less problematic in a situation where the encroachment is being lessened.

P. Monziona asked how much the structure is in the setback now. Presently, the deck is on the edge of the shore.

T. Morgan recalled that this applicant had been in previously for a Special Exception that would have altered the right of way. Mr. Whittier explained that there is no longer an issue of having to move the right of way to get around the septic system. The septic design requires a 2:1 slope for the leach field; at the point where the leach field is at the edge of the right of way, the roadway will be raised so that passers can drive over the runoff of the leach field without damage to the leach field. T. Morgan asked about the past parking concern; Mr. Whittier stated that parking would not be affected at all.

P. Monziona clarified the intent of this project – the applicant is removing the old dwelling and replacing it with a new dwelling which will be much further out of the setbacks than the current one. He asked how the new dwelling compares in size to the old one. Mr. Whittier answered that the first floor is roughly the same square footage, but they are putting a bedroom and bath on the second floor; the footprint is close to the same without following the jogs of the current cottage. P. Monziona questioned what it is about the lot that requires part of the deck to be in the setback; they are not placing a substantially bigger structure on the lot as the footprint is roughly the same.

P. Monziona invited public input in favor of granting the application; there was none. He next opened public input in opposition to granting the application.

Kim and Eric Johnson came forward; they are direct abutters to the property. She questioned the fact that a special exception was denied for the same application back in April; she feels that a special exception trumps a variance. P. Monziona explained that the applicant decides what to present to the ZBA and whether what they are trying to do requires a special exception or a variance. Variances are governed by state statute and by criteria that have to be met. Special exception criteria are laid out in the Zoning Regulations, and those criteria depend on the special exception applied for. One doesn't necessarily have anything to do with the other. At some point in the process, the applicant could realize that their application is for the wrong thing and it is therefore denied; P. Monziona did not recall the details of the previous application or the reason for the denial.

Mrs. Johnson explained that the issue is that the location of the septic pushes the road back into their property; she based that on the plan for the original application, and she has not seen a plan that shows that the road will not be touched. She objects to the placement of the septic, based on the plans she has. P. Monziona asked her if she has looked at the plans submitted with this application; she responded that they have looked at them and they look like the exact same plan as prior. P. Monziona explained that a decision tonight will be based on information provided by the applicant; by law the applicant is restricted to that information in that they can't then do something different. The conditions of the approval are based on what is represented to the town, including what is represented in the drawings. He asked Mrs. Johnson if there is something in the plan submitted by the applicant that indicates that this construction project will encroach on a right of way or road. Mrs. Johnson answered that there is; P. Monziona invited her to show her findings.

Mrs. Johnson showed a drawing from the first application and the road is diverted around the septic system. P. Monziona explained to her that she is using a drawing from the original application, not from this application, so it is not really applicable. P. Monziona explained again that the Board is only going to be able to make determinations based on information in this application; he asked if there is anything in the current plans that show there will be encroachment on a right of way. Using the plan Mrs. Johnson had and the plan from the current application, members compared and found that it did appear that the plans were the same and that the road would be pushed over.

S. Miller asked the applicant if the septic is encroaching in the road; Mr. Whittier answered that the septic is not encroaching in the road. The runoff originally would have required that the road shift over a couple of feet. The design has been redone – there will be a taper to the road that will bring it up to leach field height on the

Howells' property, which would be a maximum of 18 inches. This will allow the right of way to continue straight. Mr. Whittier also explained that the highlighted right of way from Mrs. Johnson's plan is the deeded right of way, not the one actually in use. The original drawing showed that the roadway was going to be relocated to accommodate the septic field. On the new drawing, that has been eliminated.

The applicant used an easel and larger plan to indicate the changes between the two plans. The old drawing indicated two dotted lines showing the movement of the right of way, to go around the septic system. The beaten path right now is to the right of the Howells' property. The leach field has been tapered so that the slope is decreased, and the roadway is being raised to go over the drainage area. The length of the raised portion is 22 feet and the height will be no more than 18", and that is only right at the leach field. The "bump" follows the beaten path. L. LaCourse clarified through questioning that the beaten path does not follow the road of record, and the road of record does go onto the Howells' property.

S. Miller asked if the septic plan has been approved. Mr. Whittier explained that it has been approved by the designer, but it has not been to the state yet. It is unlikely that the plan will be denied at the state level; it is a Clean Solution System which is specifically designed for smaller lots. The tank in this case has a section where air and plastic pellets are introduced to break up the material, which is usually done by the leach field.

P. Monziona asked about the beaten path and the right of way. The right of way was impossible to construct as it was deeded; the beaten path is used by all of the residents of the road to access and egress. J. Dever explained the difficulty in locating the structure keeping in mind the deeded right of way and its setbacks. The members asked for clarification as to which lines on the plans indicate the deeded right of way as opposed to the beaten path; J. Dever clarified.

P. Monziona asked if the portion of the leach field described as 22' long and 18" high is going to be in the deeded right of way. J. Dever answered that it is out of both the deeded right of way and the travel way; it is located entirely on the Howells' lot. Mr. Whittier reiterated that the only reason they are raising the road is because of the 2:1 slope of the leach field; they are raising the road to maintain the straight line of sight. The Howells' are required by the rules of right of way to allow vehicles to travel over it; the bump will be raised only on the Howell property and is done only to maintain the right of way.

S. Miller asked if this is in any way an adverse possession, this is a legal issue and this Board should not be taking up this matter until the issue is adjudicated. P. Monziona explained that as long as the Howell property is accurately depicted on the plans, and that all of the changes are going to be on the Howell property, that is all the Board needs to consider. If any other person's lot was affected, that would enter into the decision.

Mrs. Johnson asked if the right of way that has been used as it is for over 80 years is really the Howells' property; she asked if it is adverse possession and whether the property actually belongs to the Howells. P. Monziona answered that based on the facts presented, he can tell that there is ownership of the soil, and that is the Howells in this case. Ownership of the property does not change even though others may have rights to use the property. Usually, the owner of the soil can not block the right of way; the owner of the right of way has a duty to make sure the right of way is passable. For the purposes of this case, the Board needed to understand who owns the soil where the work is being done; this would include the leach field.

Mr. Johnson stated that on the deeds it does state that the right of way is the right of way of all in the Perkins Lane Association; in other words, they do not own their individual slice, but it is owned by the Association. Their concern with the initial proposal was the large radius that went completely on the right of way; now there is a more level playing field that doesn't seem as imposing. However, they would still like some assurance that this is not going to be a speed bump that is un-navigable for turning a boat around. The right of way is depicted as it was laid out 80 years ago, but because of the way the land is, the lots to the south of it are sacrificing their land for the right of way. Mr. Johnson stated that the road does not swing to the right as is depicted on the plan; it will go right over the leach field.

P. Monziona asked Mr. Johnson if he feels that the boundary lines are accurate. Mr. Johnson explained that they did not have a survey done; they have seen the pins. P. Monziona stated that the survey was done by DMC Surveyors, and he asked Mr. Johnson if he had any evidence that the surveyors were wrong. Mr. Johnson answered that they were wrong with the dotted line; it is straighter and goes right across. He thinks it has been fudged a little bit to make it look more conforming. Mrs. Johnson added that the only way to know would be to have their property surveyed; they were advised to have the right of way declared a right of way, as it has been used for 80 years. One of the pegs for the Howells' property is in the middle of the road; that doesn't seem right to them. They can not attest to whether the drawing accurately depicts the boundaries because they have not had their property surveyed, nor have they had the right of way declared due to adverse possession. Mr. Johnson used the large plan to show the location of the pin and where it is in relation to his cottage. The photos seem to show that the pin is further away from their property, but it actually is closer; if the cited pin is correct, it will be right in the driveway.

L. LaCourse asked Mr. Johnson if the deeded right of way runs behind his property, and is now being deflected off. Mr. Johnson answered that they own both sides and that the placement of the road was a convenience. Mr. Johnson stated that the deeded right of way is much straighter than the jog shown on the plan.

Judith and Arthur Knapp came forward; they are representing Norma Graham, the abutter on the other side of the property from the Johnson's. She understands that there is a re-designed septic; Mr. Whittier corrected that the plan has been redrawn to accept the height of the road. She asked who the engineer was who designed the septic and whether it has been submitted to the state. Mr. Whittier answered that the septic was designed by DMC Surveyors and that it has not been submitted pending the outcome of this hearing. Mrs. Knapp asked if any of the soil data has been sent to the state; Mr. Whittier answered that it has, and that is why they chose the system they did.

Mrs. Knapp has looked at the application first submitted (in April) and this one; the only change is the addition of the verbiage concerning only having 188 square feet of deck in the thirty foot setback. At the last meeting she had asked the Board what the law was concerning the thirty foot setback versus how the state looks at this for shoreline protection. According to the state, it is 50 feet. P. Monziona explained that the Board is only concerned with the setbacks for the town; the jurisdiction of the DES extends beyond the 30 feet.

Mrs. Knapp questioned the new construction, as she has been assured by the state that the setback is 50 feet, and she feels that the 50 feet does pertain to new construction. J. Dever explained the Shoreline Protection Area; there are three buffer zones within the 250 foot shoreline protection zone; new construction and cutting is limited in the first fifty feet from the shore. The primary purpose of this buffer zone is to minimize storm water runoff into the water body. According to the state, they would prefer nothing in that 50 foot buffer but trees and rocks; not even grass and lawns would be there. The reality is that there are things in there now; if this were an empty lot, there is a very small chance the state would allow building there. The state also looks at grandfathered structures; they can't compel someone to take it out. The also look at the fact that people have the right to use their property. What they are looking for in a situation like this is to have as much as possible removed out of that first fifty feet. They also have to take into account what the town setbacks are; in some towns the setback is more stringent than the state. The goal for the state and for this Board is to make the differences more conforming. In this case, the applicant is taking all of the house and all of the decks out of the 30 foot setback almost completely. At present, the whole structure and the decks are in the 50 foot setback; in this case about 1/3 of the house is coming out of the fifty foot setback. There are other restrictions as well, including the location of the septic and the right of way. The state will not deny them the right to have a house on a lot where there is one now; they would love to see it completely out of the setback, but that is not realistic. If it is more conforming, and the present location of the house and deck is turned into a more natural state, part of the goal of the shoreline protection program has been achieved.

Mrs. Knapp asked what the state regulation is concerning the distance between a well and a septic. P. Monziona explained that this Board deals with the town zoning regulations; whatever the state is going to require is completely separate and apart from what the town does. The state regulations will be dealt with by the state. Because this lot was created before March 14, 1995, only a thirty foot setback is required. This application

seeks a variance with regard to 30 feet, not 50 feet. If this application is approved, they are still going to have to deal with the State of New Hampshire and the DES and all the requirements of the state before they will be permitted to build. J. Dever added, as the Building Inspector, that no construction goes forward until it has all the proper approvals; they will have to have Shoreline Protection approval and septic approval before a permit will be issued. As a rule, the setback from a leach field to a well is 75 feet. Mrs. Knapp asked why they had been told at the last meeting that the septic had to be located in the right of way because of the location of the well, and that there was no place else to put it. J. Dever explained that everything has been located on the Howell property all along. The field extension from the leach field was going to be encroaching into the right of the travel way; they still have the separation needed between the well and the leach field. The tank is also out of the 75 foot setback; the state will allow septic tanks 50 feet from a well, but no closer. Mr. Knapp asked about proximity to other peoples' leach fields; J. Dever answered that at this point the state requires the owner of the new well to sign a radius release saying that you know that your radius goes onto your neighbors' lot and you could have a leach field in the radius.

Mr. Knapp raised concerns about vehicles driving behind Mrs. Graham's cottage and damage that could occur to the cottage because of the size of the construction vehicles. He also voiced concern about the road being raised, and the leach field being raised, and there is no solution given for the run off, which will go right onto her property. There is a drainage pipe there to try to deter some of that water, but it doesn't get it all, and there is a maintenance issue keeping it clear so the water doesn't run down the road. P. Monziona asked Mr. Knapp how he ties his concerns to the Howells' rights, if all they wanted to do was replace their leach field and never touch the building. He answered that he would talk to the Howells in that case. If the Howells were to leave the cottage alone, right where it is, they can put a leach field in away from the right of way. It is not going to be a year round home and they can do what everyone else does and get their water from the lake.

S. Miller questioned why, when a variance is being sought for the deck setback, the Board even needs to consider issues of the septic, or the well, or anything else, because there is no information to make a decision on those areas. P. Monziona explained that conditions could not be imposed concerning those items, but part of the criteria is that due to the unique characteristics of the lot, the variance is needed if the applicant is going to be able to do what he wants to do. The uniqueness of the lot is affected by the size of the lot and the locations of the well and septic. Those are relevant to the Board's consideration. S. Miller agreed but reiterated that right of way issues and all the other issues being discussed are not being adjudicated; the issue being decided is the deck being in the setback. T. Morgan added that much of what has been brought up requires civil remedies and is not something properly brought before the Zoning Board.

Mr. Knapp brought up the square footage of the new structure; it will be 822 square feet. P. Monziona asked the applicant to confirm; he responded that the first floor will be approximately 720 square feet. Mr. Knapp stated that if they are going to stick to the living area of the original house, it is 783 square feet. He also stated that there is a plan to put in a walk-out basement, which based on conversation earlier tonight, a basement means bedrooms. The septic is sized for two bedrooms, but a basement would allow for more bedrooms in the structure. The height of it will create an eyesore; there are all cottages, then this house that will be very obvious, and he doesn't understand how they can give a building permit without ever seeing the plans for the building. T. Morgan stated that this is not the Planning Board; this is the Zoning Board, and they do not issue building permits. They only consider zoning issues.

Mr. Knapp continued; he is concerned that the deck will interfere with the view of the lake from other cottages, namely theirs. P. Monziona asked if the deck is higher than the current structure. Mr. Knapp answered that it probably will be because of where they are going to put the new structure and how high it is going to be from the ground. If the deck is coming off the first floor, above the foundation, it will be pretty high because of the way the ground slopes away. P. Larochelle asked if there is any obstruction by the current deck. Mr. Knapp answered that there is not; presently the house blocks the view of the deck. P. Larochelle asked if the house is pulled back 30 feet, and there is nothing there but vegetation, would they not have a view. Mr. Knapp responded that they would see the deck. There was continuing discussion concerning the view of the lake; the Knapps feel that their cottage is back far enough that the deck will obstruct their view. P. Larochelle pointed out that the deck is going to be much further from the lake. Mrs. Knapp explained that the house and deck are going

to be 25 feet higher up than the current structure; now they don't see it at all. P. Monziona asked if the current structure obstructs their view; Mr. Knapp answered that it depended on where they are on the property.

Mrs. Knapp showed the Board pictures of the road going behind her mother's cottage. She also had photos of the pipe that Mr. Whittier refers to as seasonal; the photos were taken Memorial Day Weekend. All members viewed the photos.

Norma Graham, an abutter came forward. Her daughter and son-in-law have been representing her. She asked if anyone has been up to Sunset Lake to look at the cottages. The right of way is partly on her property; you have to drive on her property to get to Howells'. There is lots of ledge at the site of the deeded right of way; her uncle tried to locate the right of way properly back in the 40's, but was unable to do so because of the ledge. She thinks it would be hard to make a determination without going up there to look and see what is really going on. P. Monziona explained that the Board has not made a formal site visit in connection with this application; if a site visit were to be done, it would have to be noticed properly. It is governed by statute and is considered a public meeting. From time to time the Board does do site visits when they feel it would be useful, but that is a decision made by the Board on a case by case basis. Mrs. Graham pointed out that the road behind her cottage is no wider than the Board's table. L. LaCourse asked if the building corner seen in one of the photos is her cottage; Mrs. Graham answered that it was.

Ann Gallant came forward; she was at the meeting with Bob Morrill. Their cottage is the last at the end of the road. She spoke at the last meeting about her concerns with the safety of the right of way. She is now concerned that the road will always be passable during the construction process; they are in and out several times a day. She already has trouble with the road with her car; she is concerned that they will not have access during the process of raising the road. P. Monziona explained that the Board looks at the new structure proposed and the fact that the deck will protrude into the setbacks; they look at the criteria and see if it is met in regard to the building. How the construction is implemented is a different process; they will need state approvals, and they will need a building permit from the building inspector and possibly approval from the Planning Board. As far as the actual building process, and whether they are going to be driving heavy trucks too close to other houses, or blocking the road, how they actually conduct the project is not something this Board gets involved in. They do consider safety and diminution of value, but they do not look at how the project is actually conducted; there are other avenues for that. J. Dever added that during the course of the Staff Review, the Fire Department did voice concern about adequate access. Ms. Gallant mentioned that they had gone through a medical emergency last fall, and it was scary even on a regular day.

Mrs. Johnson came back to the table; she recalled that part of the reason the Special Exception was denied in April was because of the roof line being higher and not meeting the regulation under which it was requested. She asked if that had anything to do with this application tonight. P. Monziona explained that the prior application was a Special Exception; this is a variance. When the Special Exception was applied for, the regulation they applied under required that the new building be exactly the same as the current building. It allows you to remove an existing building and replace it, but if you do that, you have to make the new one exactly the same as the old one in all dimensions. If you are going to go outside those dimensions, you can't have the Special Exception. That is why they were denied. Now they are here for a variance; if they wanted to exceed the 35 foot height restriction with the new building, they would require an application on that. There is nothing indicating that they are trying to get around the 35 foot height restriction; Mr. Whittier confirmed that the building will not greater than 35 feet in height.

P. Monziona asked the applicant if the structure is going to be 25 feet higher than it is now. Mr. Whittier explained that he thinks she meant that the house is going to be 10 feet higher and also that she was talking about the deck, not the house. With the elevation of the land, it is approximately 6 feet higher. If they are concerned with their view, with the deck being back 25 feet, the house is there now. If a deck goes where the house is now, the view should only increase. He does not see that as an issue. T. Morgan asked what the height of the new deck is in relation to the house that is being replaced; Mr. Whittier referred to one of the pictures showing the walkout in the back. There is a deck off the walkout, which will be about where the bedroom is now. T. Morgan stated that when he looks at the plan, it shows that the proposed deck is over where the old

structure is; he asked what the height of the old structure is relative to the height of the new deck. Mr. Whittier stated that it is about 7 or 8 feet off the ground where it goes over the old structure. T. Morgan asked how tall the old structure is; Mr. Whittier answered that on the walk out side from the ground to the gables it is 19 feet and on the lower side, from the ground to the gable is 13 feet.

P. Monziona asked how the two compare; Mr. Whittier clarified that compared deck to deck, the new is roughly 6 feet higher than the old. P. Monziona clarified his question; where the new deck is going to go, there is a house there now. Mr. Whittier responded that the house is there with a ridge of 19 feet. The platform of the deck will be about 8 feet high. P. Monziona clarified through questioning that the new deck will be approximately 11 feet lower than the existing house; Mr. Whittier agreed. P. Monziona explained that he is trying to ascertain what the obstruction to the view would be, if the deck is going to be eleven feet lower than the house that is there now.

P. Monziona invited the applicant to respond to comments made during public input. Mr. Whittier addressed the comment by the Johnsons' who stated that the road is straight in, and that it doesn't veer to the right. He showed a picture with a boat in front of a jeep which was taken near the Graham cottage, it clearly shows that the road does veer hard to the right, and the front of the jeep is approximately where the septic is going to be. P. Monziona clarified through questioning that no part of the leach field is going to be in the right of way, but that the right of way is going to be raised to conform with the leach bed; Mr. Whittier agreed. P. Monziona asked if that would create any runoff issues for the abutters. Mr. Whittier explained that it should not change at all because they are not increasing the ground area; they're not adding a ledge out over a drop off. They're raising the ground and at that point there is no runoff because it is on the property line side of the road so it all runs down the ditch line and doesn't cross the road until it gets further down to the culvert. Where they are raising the road will not affect the runoff at all. Any runoff from the new house will all be caught by catches and perimeter drains and stuff that the state requires to catch the proper runoff. They will not be pushing any water onto the Graham property.

L. LaCourse asked about the time needed to raise the road; Mr. Whittier explained that it will take about ½ a day, and that the road will never be impassible. The road will be raised in layers; if his equipment is in the way and someone needs to pass, he will move out of the way. P. Larochelle asked about the height of the leach field slope at the road; Mr. Whittier answered that it will not be 18 inches. It is a 2:1 runoff to the grade now, so the 18 inches is a worst case.

Mr. Knapp made an additional point about the runoff coming off the 18" higher section of the road; he is concerned about where it is going to go. P. Monziona asked if this is a permeable surface; Mr. Whittier confirmed that it is gravel and will not be paved, and that the water will pretty much be absorbed, just as it is now. Mr. Whittier also stated that in regard to the Grahams' concern about ground compression around their cottage and septic, he is obtaining highway steel plates to lower the impact. They will bridge the section of road at the Grahams to lessen any pressure. He also asked that the Grahams have their tank pumped so it can be inspected for deterioration where it is so close to the road; they want to make sure it is not a failed system before they get blamed for failing it. They will do everything they can to keep the road the way it is.

Mr. Johnson showed a picture from the Grahams who he feels are sacrificing a significant portion of their property for the road. Beyond that it veers into the deeded right of way, then back so that it occupies both pieces of his property. T. Morgan asked what this has to do with the variance for the setback. He feels that the picture does a good showing of how the runoff does cross the road, and not only onto their property.

Public input was closed.

T. Morgan feels that the abutters have raised very valid objections, and he does appreciate their concerns, but several of them concern civil rights which are not before this Board. Others concern licensing requirements the applicant will have after he leaves this Board, if in fact the application is approved; those have to do with DES and state requirements. He is required to control runoff; he is required to make access available; he is required

to make sure he does not damage anyone else's property. Those are not the issues before this Board; there is an application for a variance subject to the state statute, and that is what the Board needs to consider.

P. Monziona agreed; even the applicants' informing the Board about purchasing the steel plates for the roadway was an issue that goes toward implementation, which is way beyond anything this Board needs to consider when determining whether the criteria are met in this case. He acknowledged as Chair that he did let the meeting go longer in terms of public input; it is important to follow procedure and process otherwise the meeting breaks down into a debate. All members are attending after long days of working their jobs to volunteer to do this. It is very important that it is done correctly and that a protocol is followed. The input was legitimate and he was glad to get it, but not all of the issues raised go toward whether the variance is appropriate.

S. Miller agreed; it is not the job of the Board to adjudicate an appeal on the Special Exception that was already decided. The Board should be narrowly focused on the variance for the deck; if there are other issues with the house after that, there is plenty of recourse for the abutters to seek equity relief.

L. LaCourse requested that the Board move to the worksheet.

WORKSHEET

P. Larochelle stated that the variance will not be contrary to the public interest. The building structure being taken down and a new structure being put up will be a pleasurable and desirable improvement to the property. P. Monziona agreed; while the concerns brought forward are important and valid, the focus needs to be on the idea of taking a building that sits almost literally on the water and is completely in non-conformance with what the town and the state are trying to do the protect the shoreline, and it is moving it back to put a safer, nicer building there. But, the deck is going to end up a little bit into the 30 foot setback; it serves the public interest to see that change occur, and he is sure that if this is granted, the applicant will have to make sure the concerns of the abutters are addressed appropriately in the construction phase. T. Morgan, L. LaCourse, and S. Miller all agreed.

P. Monziona stated that the request is in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed. He says that because he thinks taking a building and making it less non-conforming, getting it out of the shoreline and improving its structure is consistent with the Master Plan and will make the property safer and it is within the character of the district. T. Morgan agreed; the spirit of the zoning ordinance is to reduce non-conformity and that is precisely what is happening here. L. LaCourse agreed. S. Miller agreed; there will be a significant improvement not only to the safety of the new building but also to the aesthetic quality of the new building. It is essentially a residential building replacing a residential building in an approved area. P. Larochelle agreed.

T. Morgan stated that by granting the variance substantial justice would be done. The value to the people of the Town of Alton is that a non-conforming structure will be pulled back away from a body of water to a more conforming position, and that is substantial justice to the town with little negative impact. L. LaCourse, S. Miller, P. Larochelle, and P. Monziona also agreed.

L. LaCourse stated that the request would not diminish the value of surrounding properties; historically improvement of a home increases the value of properties surrounding it. S. Miller agreed; all you have to do is look at the before and after pictures, and there has been no testimony that property values would be diminished. P. Larochelle agreed. P. Monziona agreed; he noted that the concerns of the abutters that the construction may be a problem due to heavy trucks or what it might do to the road are legitimate concerns. In the long run, if the construction is done appropriately under the regulation of the town and the state nothing will be done to diminish any value of the surrounding properties. T. Morgan agreed.

S. Miller stated that for purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area, he believes there are special conditions that do distinguish this property from other properties in the area. The applicant is just trying to build

a residential home that is not extraordinary in any way. He is making his home more livable and aesthetically pleasing. He is limited to the deck facing the lake and wants to make sure it is safe, and he wants to make sure the septic system is safe and appropriate, and no other good alternatives have been brought forth for this applicant. Therefore, this proposed use is a reasonable one. P. Larochelle agreed. P. Monziona agreed; the special conditions of the property involve the setback of the right of way. The idea of taking the building out of the lake setback leaves no choice but to have a smaller portion of it within the 30 foot setback. It is because of these characteristics of the property that the unnecessary hardship would be created. T. Morgan agreed and added that he thinks that under the new statutory criteria established by the legislature that this application meets section A of the hardship criteria. L. LaCourse agreed.

P. Larochelle stated that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one. If the criterion in Sub-paragraph (A) are not established unnecessary hardship will be deemed to exist only if owing to special conditions of the property that distinguish it from other property in the area, the property can not be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it. P. Monziona agreed; the use is a reasonable one. It is a residential dwelling, which has always been the case, and the special circumstances of the property have been identified, as far as those he would take into consideration. T. Morgan and L. LaCourse agreed. S. Miller agreed and added that this paragraph was in fact created just so cases like this, when they do come up, have criteria that can be met so people would have reasonable use of their land and their home.

P. Monziona notes that the applicant has not received septic or DES approval, and has not presented the specific plans of construction to the town to assure that everything is being done appropriately without interference or damage to abutters. He suggested that those considerations be kept in mind, and invited a motion in this case.

S. Miller asked what would happen if the septic plan was denied by the state; he wondered if the Board approval would remain in force, or whether the applicant would have to come back. P. Monziona explained that what he was suggesting was that the motion contain certain conditions, including that the applicant must obtain all appropriate approvals but the state as well as the town; even something that general, which would include septic and DES. T. Morgan agreed and stated that the problem with enumerating the conditions is that they might miss one. S. Miller asked if that was not automatic; he can't build unless he has all of that. P. Monziona agreed but added that he thinks it is appropriate to require those conditions.

T. Morgan made a motion to approve the application for Case #Z13-7 with the condition that all further state and town approvals and licenses be acquired. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Mrs. Knapp requested from the floor that the minutes include the statement that the residents of Perkins Road here present are still opposing this plan.

VIII. OTHER BUSINESS

A. Previous Business: None

B. New Business: J. Dever requested that the members look up SB50 from this legislative session as it speaks directly to a time limit on variances and special exceptions; if they are not used in two years, they are void. That is set to go into affect in August. This does not change the fact that a variance runs with the land, but it does place a time limit on how long an approval can be held before it is implemented.

P. Monziona acknowledged that public input went on a little long and he appreciated the members helping to pull it in and the fact that they helped to support the process. Public input is important, but when it breaks down into debate, the process breaks down.

C. Minutes: June 6, 2013

S. Miller made a motion to approve the minutes of the June 6, 2013 meeting as presented. L. LaCourse seconded the motion which passed without opposition.

D. Correspondence: None.

IX. ADJOURNMENT

T. Morgan made a motion to adjourn. L. LaCourse seconded the motion which passed without opposition.

The meeting adjourned at 9:37 p.m.

The next regular ZBA meeting will be held on August 1, 2013, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session