

Members Present: Chairman, Richard Quindley; Keith Chamberlain; Alternate-Timothy Kinnon

Members Absent: Charles Westen, Lyndon Avery, Marcella Perry, Selectman's Representative, Pat Fuller.

Others Present: Planner, Kathy Menici; Secretary, Jennifer McCullough and others as identified below.

Call to order: Chairman R. Quindley called the meeting to order at 7:07 p.m. He introduced the members of the Board and Planner.

Appointment of Alternates: Chairman R. Quindley appointed Alternate, T. Kinnon for the vacant position in the absence of Charles Westen

R. Quindley read into the record the purpose of the hearings and stated the rules of procedure.

K. Chamberlain pointed out that there are only 3 board members present which is the number of affirmative votes needed to carry appeal to approval, so if anyone wanted to withdraw and continue to next month when there may be more members present. Basically to not have a full board does not give you the right to a new hearing. So basically your odds are better if you have 5 members versus 3. The 3-member rule is a state law.

S. Gray, an applicant, questioned whether or not ZBA is supplied with recommendations from Town Planner or Staff Members, and if this information would be available to her. K. Menici gave a copy to Susan Gray for her review.

NEW APPLICATIONS:

**Case#ZO5-17
Ken Gilbert**

Map 9, Lot 33-1

**Area Variance
244 New Durham Rd**

Application submitted by the property owner Ken Gilbert for an Area Variance requesting relief from the Alton Zoning Ordinance, Article 300, Section 363b, Frontage Requirement of 150'. The property is located on Route 11 in the Rural Residential Zone.

D. Quinley asked applicant to come forward.

Ken Gilbert, applicant, stated his name for the record. Presented case to board as follows. On Route 11 at the bottom, there is 135 feet of frontage. Town requires 150 feet. What I am looking for is variance so that I can sell or do something with that lower 1 acre. Road used to be a railroad track; when the road came through we had cabins there and state granted a right of way to access from Route 11. What I am looking for is for the access to Route 11 be made through lower right of way over the state land and the reason for that is that the other way there is some 800 feet to New Durham Road, and it is uphill and it is a dirt road. What I would like to do is

from that 1 acre; access Route 11 as does the party on other side of road (Lot 1). Lot 1 has asphalt driveway over that state land, for which he has a deeded right. If I sell that acre, not sure I am going to sell it, but am going to divide it and would like that parcel to have same access.

K. Chamberlain: Understood on package that I got for your appeal, you have completed a two-lot subdivision?

Mr. Gilbert stated that this was correct, but this one lot is the only one that needs a variance.

Mr. Gilbert stated that he would present second lot if I get approval here. Lot 2 is full 5.0 acres. Want to retain for my own use 3 acres and subdivide the 1 acre at the bottom and other acre with two cabins and well there etc. I have 158 feet there.

K. Menici: Mr. Chairman, Mr. Gilbert in 1981 did a two-lot subdivision. That is the full size plat that Keith has in front of him. At the time subdivided frontage is on Route 11, that is defined as Lot 1 on 1981 subdivision plan. At that time, they had to obtain a driveway permit from NH DOT. NH Route 11 is limited access highway; and DOT will only issue driveway permits every so many feet. You will see at the time that the driveway permit was issued by DOT, they instructed Mr. Gilbert that the driveway permit was a shared access driveway permit to provide access not only to newly created lot in 1981, but also provided access to the portion of the parcel that is subject of this application. That affected the location of the boundary line which is the reason that they only have 135 feet of frontage on the parcel that Mr. Gilbert is bringing forward tonight.

K. Chamberlain pointed out for the record pictures in packet are not reflective of his highway cut. Mr. Gilbert confirmed this.

Mr. Gilbert: Nothing has changed; deeds are the same from when I first bought the lot. Deeds all match the dimensions on the plot plan. On deeds it gives the right of way over the state land for that lot as well as the other one.

K. Chamberlain: If you do get approval for this appeal, wondering if you may not have enough land with proper soils to have enough land to subdivide. Soils are important part of creating lots in state of NH.

Mr. Gilbert stated he is not at all worried about type of soils.

D. Quinley asked if anyone in favor or against appeals. No response, so closed this portion of hearing and deliberate.

Board Discussion:

Public Interest:

The variance will not be contrary to the public interest.

Reason: KC: Feel that because there is 135 feet of frontage and DOT has already issued a highway cut for that specific location and because it is a shared driveway and the boundary line splits the 50-foot right of way in 1/2. I feel that 1/2 driveway that is on the abutters property will work just as well, as to include in the 135 feet to make what I consider to make the 150 feet of frontage. TK, RQ 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, character of the district within which it is proposed.

Reason: R.Q: As far as the district which it is proposed, plenty of room there and I think that where he was required to put the driveway in that certain spot he shouldn't be punished for only having 135 feet. KC, TK Agree

Substantial Justice:

By granting the variance substantial justice will be done.

Reason: TK: Because applicant will be allowed to have reasonable use of his property. RQ, KC Agree

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

Reason: K. C. Existing driveway cut already there servicing Lot 1 on the plan that was submitted tonight, don't see any harm in using same highway cut to service Mr. Gilbert's future plans to subdivide lot 2. RQ, TK Agree

R. Quindley read the following statement into the record:

Hardship-Boccia-Area Variance Request Criteria

(1) RQ: An area variance is needed to enable applicant's full use of the property given the special conditions of the property, special conditions being the designated driveway cut.

(2) The benefit sought by the applicant cannot be achieved by any other method reasonably feasible for the applicant to pursue, other than an area variance. TK, KC Agree

Board Discussion and Reasons:

RQ stated Based on above analysis special conditions do exist such that literal and enforcement of the zoning ordinance is an unnecessary hardship. TK, KC Agree

Motion made by K. Chamberlain, seconded by T. Kinnon that the ZBA application for

Case#Z05-17, Area Variance, in light of the findings of fact, be approved. Motion carried with all in favor.

**Case#ZO5-18
Helane Shields**

Map 27, Lot 24

**Special Exception
91-93 Main Street**

Application submitted by the property owner Helane Shields for a Special Exception from Alton Zoning Ordinance, Article 200, Section 220A-4, and Expansion of Existing Non-Conforming Use. Applicant proposes to expand and relocate an existing auto repair business into a new 30'x 41' building. The property is located in the Residential Commercial Zone.

Discussion on T. Kinnon excusing himself from this case due to the fact he has had past business with applicants that did not end on a favorable condition. After much discussion with board and applicant, was decided that he would sit on case.

D. Quindley asked applicant to present case, done so as follows:

Dave Turner is here and ran a very successful business early this year and grew out of business. Would like to put up two-bay auto repair shop, and close down the existing bay at the gas station. Dave would like to turn present Bay into waiting room, which will be separated from present gas station office. Gas station would be run as is by daughter.

K. Chamberlain: Looks like you have done research. I guess we are basically just here to decide on metal building. Would it be a Morton Building? My concern is the appearance from town. K. Chamberlain asked if there were any elevations for building.

Helane Shields stated was not sure what Morton Building was, and showed pictures of building to Board.

K. Chamberlain directed question towards K. Menici if there had been any concerns stated by Fire Chief or building inspector. Fire Chief went out and visited site and he was satisfied that he would be able to get vehicles in and out. Only concern that code officer expressed was that the repair and inspections not be expanded out of the proposed building and into other buildings on site. Also stated that they would need to go in front of Planning Board, which applicant confirmed they would be doing. Fire Chief did have three issues that he thought would need to be addressed, but this will be taken up at Planning Board level. K. Menici also stated that she would get copy to H. Shields.

Discussion as to what repairs would consist of and amount of oil on premises. Mr. Turner stated there would be no more than 50 gallons of oil on premises. Hours of operation would be 8:00-4:00, ½ day Saturday, closed on Sundays.

Discussion that all state, and local permits will need to be issued, also K. Menici stated that it would need to come before Planning Board. Applicant confirmed this.

D. Quinley wanted confirmation as to reason we were here.

K. Menici stated that this was an expansion of a nonconforming use, which needs a Special Exception.

K. Chamberlain: Is this a new plan? Is there an accepted plan that exists now?

K. Menici: Registry does not record site plans, only subdivision. This plan will be the plan that would go to Planning Board. If Planning Board approves it, then the chairman will sign off on plat and it will go into permanent records.

K. Chamberlain: Is driveway access off of School Street onto your property something that is recorded.

C. Shield: Highway Department has approval for that.

Discussion as to any new signage and applicant stated no new signage would be needed.

D. Quinley asked if the applicant would like to make any final comments.

H. Shields: Think this is a compatible use of the property. Mr. Turner has had a very successful business and I think this is a compatible use for town. Never had any problems with neighbors. Church and funeral services have overflowed onto our property. Always made sure Church was welcome to park. Also the zoning department has granted Special Exception for service garages in past.

D. Quinley asked if anyone would like to speak in favor.

D. Turner: I hire people in this town. People have been asking me to come back and I think I will be positive for town.

D. Quinley asked if anyone would like speak against the application.

Close portion of hearing and go to deliberations.

R. Quindley read all the criteria into the record as follows:

1. A plat **has been** accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made. KC, TK agree.

2. The specific site **is** an appropriate location for the use.

Reason- TK: I believe it is because there is already an automotive garage there. The proposed structure doesn't appear to me that it will be excessively large. Well thought out as far as parking, driveway and access is concerned. KC, RQ Agree.

3. Factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses.

Reason- KC: I feel this is a continuation of what is already an existing use on the property and I don't feel it has harmed the neighborhood and I don't think this expansion

would do anything negative. RQ, TK Agree.

4. There **is no** valid objection from abutters based on demonstrable fact.

Reason- RQ: No objection at all, KC, TK Agree.

5. 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.

Reason- TK: I believe first the location of building where it is set off the road is a good location, again, it was well thought out as far as parking and driveway, don't see any nuisance or hazard. KC: Also important that Town Planner, Fire Chief, and Police Chief all had no problem with it either is important. RQ agree.

6. Adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure.

Reason- KC: Basically the structure is going to be for repair of automobiles, needs a roof four walls, a window and some doors. As far as the utilities and facilities, they are already preexisting in other structures on property and they will adequately suit this expansion of the business. RQ, TK agree.

7. There **is** adequate area for safe and sanitary sewage disposal and water supply.

Reason- RQ: Has town water, I know that and sanitary sewage supply in existing building with approved septic system. KC, TK agree.

8. The proposed use or structure **is** consistent with the spirit of this ordinance and the intent of the Master Plan.

Reason- TK: It is allowed by Special Exception so it is within the spirit of the ordinance and the Master Plan does speak somewhat to commercial business in the downtown area. KC, RQ agree.

K. Chamberlain made motion that in light of the findings of fact, we approve Case #ZO5-18 with the all the criteria of the Special Exception being met as well as the condition that all state and local permits be approved and copies be provided to the Planning Department prior to the issuance of a building permit, seconded by T. Kinnon, motion carried with all in favor.

Case#ZO5-19

Map 36, Lot 19

Special Exception

Peter Iwanicki

137 Mount Major Highway

Application submitted by Tom Varney, Varney Engineering, on behalf of the property owner Peter Iwanicki requesting a Special Exception from Alton Zoning Ordinance, Article 200, Section 220 B.2(c). Applicant proposes to construct a new foundation under an existing cottage. The property is located at 137 Mount Major Highway in the Residential Commercial Zone, The

Town of Alton Shoreland Protection Overlay District and the NHDES Shoreland Protection Overlay District.

There was much discussion about the location of the pins and the location of the house and the fact that it does not adhere to 25 foot setback as well as being over the line of state right of way. Mr. Chamberlain expressed great concern in issuing a permit when house is located in state right of way.

D. Quinley: Doesn't bother me that much because easement has been filed with DOT.

K. Menici: Mr. Varney might be able to answer questions concerning this.

T. Varney: Did survey. the right of way line is parallel to center line on route 11, more than 9-1/2 feet off of Route 11. Pins are in wrong spot. Pins are not where they are supposed to be. Unfortunately boundary line goes through house, determined decades ago. Survey based on electronic transit and it is correct. 1-1/2 and 2 feet over line.

K. Chamberlain: Want to ask town planner how we should handle house being in state right of way. The house was built before zoning ordinance was in affect in Alton.

K. Menici stated that they will be applying to DOT for necessary permits.

K. Chamberlain: What do other board members feel?

D. Quinley: Willing to accept accuracy of plan.

T. Kinnon: Will accept accuracy of plan

T. Kinnon: Motion to accept waivers. All in favor.

D. Quinley asked applicant to state case.

T. Varney, engineer for project stated house has been there a long time. Would like to excavate underneath and put in full foundation. Stone right now. Improvement of property, not moving building frontward, sideward and not raising it. DOT works with people when in state right of way. We have formal encroachment permit that takes some time, also have excavation permit.

D. Quinley: Would you make more parking down near road?

P. Iwanicki: Plan to make retaining wall and more parking.

P. Iwanicki: Room to update water heater.

D. Quinley stated that when you do excavating you will have to have state approval.

K. Chamberlain requested copy of septic design that was given to state. Applicant understands that he is on seasonal water, and states that he will only be using as a seasonal home. Is septic design going to be on file with building inspector?

T. Varney: Will submit tomorrow.

K. Chamberlain: What is in place now.

T. Varney: 1,000 septic tank, drywall.

- K. Chamberlain. Would he have opportunity to put in well?
T. Varney: Not a concern.
K. Chamberlain: Sill height is 95.3 to the back of the house. What is that reference taken from?
T. Varney: Benchmark on the nail and spike.
K. Chamberlain: Does that 95.3 correlate or respond to the full-length level?
T. Varney: Put benchmark on tree and call it 100 and get elevations from that.
D. Quinley: Anything else you would like to add.
T. Varney: We are far enough on side, and far enough on setbacks. Has nice property there and has been upgrading it and will continue to update.
K. Menici: A number of abutters have stopped by and no concerns stated.
D. Quinley: Would any one like to speak in favor or oppose. Will close this portion of discussion for deliberations.

Board Discussion: After reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, The Alton New Hampshire Zoning Board of Adjustment has determined as follows:

R. Quindley read all the criteria into the record as follows:

1. A plat **has been** accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made. **KC, TK agreed.**

2. The specific site **is** an appropriate location for the use.

Reason- TK: Existing cottage, albeit have setback issues that will be dealt with at state level. Full foundation and not raising the sill height. Don't consider problem. RQ, KC agree

3. Factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses.

Reason- KC: Mr. Iwanicki has made many updates to property and stated he will continue to do so, don't see how this would affect the property values in area in a negative way RQ, TK agreed.

4. There **is no** valid objection from abutters based on demonstrable fact.

Reason- RQ, there were no objections from any abutters. KC, TK.

5. 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.

Reason- TK: No undue nuisance for vehicular traffic. Applicant has already stated that he intends to improve the traffic area. RQ, KC Agree.

6. Adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure.

Reason- KC: All utilities will remain intact, TK, RQ agreed.

7. There is adequate area for safe and sanitary sewage disposal and water supply.

Reason- RQ: Seasonal water and new septic design being approved. Will be submittint to town. TK, KC: Agreed.

8. The proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan.

Reason TK: It is consistent with allowed use for that zone and also believe with what the Master Plan states. RQ, KC Agreed

Motion made by K. Chamberlain, seconded by T. Kinnon to approve Case #ZO5-19 with all the criteria of the Special Exception being met as well as the condition that all state and local permits be approved and copies provided to the Planning Department prior to the issuance of a building permit. Motion carried with all in favor.

**Case#ZO5-20
Susan Gray
140)**

Map 8, Lot 3A

**Administrative Appeal
Frank C. Gilman Highway (Rte**

Application submitted by Susan Gray requesting the Alton ZBA grant a building permit per RSA 674:41 I&II. The Property is located on Frank C. Gilman Highway the Rural Zone.

Susan Gray (applicant) stated name for the record.

K. Chamberlain: For the record realize only 3 members present and need 3 votes.

S. Gray (applicant) stated case as follows: Purchased a preexisting nonconforming lot of record and was told by town officials because of state law RSA674.41 could not receive building permit without approval from ZBA. RSA was created for subdivision regulations at the state level having to do with obtaining building permits on Class 6 roads, language was subject to interpretation to say any lot that does not have required frontage, not eligible for building permit until approved by Zoning Board. Would like to submit building permit for single-family house on this lot.

Have you seen letter from Brian Boyers from packet saying he has no objection but Russell Bailey stated cannot except?

D. Quinley: Lot 7

S. Gray: My husband owns lot 7 and has been granted 3-lot subdivision, and has driveway permit. Deeded right of way in lot 7 reflected in subdivision. Road of access is Route 140.

Lot 3a and 5a in trust. Have right of way across 5a, has deeded right of way through lot 7.

D. Quinley: You have a right of way across 5a.

S. Gray: In process.

K. Chamberlain: Assume you are going to do a continuation through lot 3a and 5a to Lot 7.

S. Gray: Do have driveway permit from state, shared access with one of the houses in Lot 7 as well as a continuation to Lot 3a. House on Lot 7 on lot 7 will be taken down.

D. Quinley: Right of way is on the lot that the house is on.

S. Gray: Yes, easement runs on that lot that the house is on. Fits right within right of way that was deeded.

S. Gray: Lot 3a has remained intact for well over 100 years.

K. Chamberlain: Zoning wasn't in place in Alton at this point.

K. Chamberlain: Did you read 674-41 in its entirety.

S. Gray: My interpretation was that this was for subdivision, but this lot is not being subdivided.

K. Menici: There is case law that has determined that this RSA applies to all lots and not just lots in a private subdivision. Page 372 of handbook. Case Brook versus the Town of Ossipee in 1988. Under annotations under purpose. Came out of a case in New Durham also.

One of the reasons RSA was drafted was to assist communities to prevent scattered developments, as well as for safety issues.

D. Quinley: Does not pertain to this particular case.

K. Menici: It could. Anytime you have single family home not on a class 5 road, issues concerning life safety. Gave communities more control over where development occurred. Legislation drafted so that it would not be just Building Inspector making these decisions, but elected officials as well.

D. Quinley: Lets just say they wanted to build on back lot, wouldn't be here.

Board had discussion on the towns new Driveway Standards that will be coming into effect because of the added request recently for long driveways. Have been using NFPA code as standard at this point.

S. Gray was asked to describe the type of driveway they would be building. She stated it we have

Driveway Standards from town and that is what we are going to do. No wetlands involved, all gravel runs along ridge, might drop 80 feet over 3,000 feet in length. Won't be drainage issues. Wide and sloping to be what is in line with what is in line with Town. 18 feet with two-foot shoulders on each side. Hammerhead at end so fire vehicles can turnaround. Will be places to pass as well as turnaround. Top coat will be 1-1/2" crushed gravel.

K. Menici: Mr. Bailey told me that the applicants will be having to comply with town Driveway standards. Will be a couple of standards proposed based on length of driveways. NFPA standard requires that any driveway that exceeds 150 feet is constructed to NFPA fire lane standards. Probably 7 or 8 criteria. For example by Mt. Major steep sloping driveway. Define width, what structure of road has to be. What the average gradient of road should be, what the steepest part of the road should be. Turnouts that are 40 feet in length and placed every 200 or 300 feet. Very specific guidelines. Standard developed by town is based on that, but modified for local conditions.

Was discussion concerning applicants possibly signing waiver with town, but S. Gray stated, she was reluctant to do something like this as it might have some affect on her homeowners insurance.

K. Chamberlain stated that since we are asked to make a decision that the Building Inspector can't make we now have his authority. He can't do it without permission from us. Don't know if the board read RSA 674-1

T. Kinnon: Town administrator has stated that they will be required to build this driveway to proposed standards of town. I feel in this instance don't feel they should have to sign a waiver.

K. Menici stated that this was outside of Board's scope of authority.

K. Chamberlain confirmed with applicant that they have no plans to subdivide

D. Quinley: Anything else you want to add. Anyone here to speak in favor?

B. Burgeron (abutter): Right of way serves as a right away up to parts of our property 700 acres, originally made up of 6 different lots. One of those is this lot. That right of way is access from 140 on backside. Wood road, deeded right of way.

S. Gray: Wood road is still intact, not planning on doing anything with that. Wood road is owned by lot 20 and we have deeded right of way over that. Obviously, don't think he has any intents in doing away with that.

B. Burgeron: I am in favor.

D. Quinley: Anyone here to speak against?

Close this portion of hearing and move to delegate.

K. Chamberlain: Since concerns of police and fire chief have been met, and driveway standards will be part of CO, see no reason why we should not accept appeal and issue building permit.

R. Quindley: I agree

T. Kinnon, in light of the findings of fact, make a motion to approve Case #Z05-20, Map 8 lot 3a, Administrative Appeal with condition that all state and local permits be approved prior to the issuing of building permit. Seconded by R. Quindley. Motion carried out with all in favor.

Motion made by K. Chamberlain, seconded by T. Kinnon to adjourn at 9:25 pm, motion carried with all in favor.

Adjournment

RICHARD QUINDLEY, Chairman

Respectfully submitted,

Jennifer McCullough, Secretary Pro-Tem