

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
Thursday, September 1, 2022, at 6:00 P.M.  
Alton Town Hall**

**MEMBERS PRESENT**

Thomas Lee, Chair  
Frank Rich, Member/clerk  
Paul LaRochelle, Selectman's Representative  
Mark Manning, Member

Tim Morgan, Member – excused absence  
Mike Hepworth, Member – excuse absence

**OTHERS PRESENT**

John Dever, III, Code Enforcement Officer  
Paul F. Zuzgo, LLS, Agent  
Dexter & Holly Brown, Owners  
Jeffrey L. Green, LLS, Agent  
Joseph Darrah, Owner

**CALL TO ORDER**

Chair Lee called the meeting to order at 6:02PM.

**INTRODUCTION OF BOARD MEMBERS**

Roll Call was taken for the Board members and individuals present at Town Hall.

**APPOINTMENT OF ALTERNATES**

No alternate members present.

**STATEMENT OF THE APPEAL PROCESS**

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds that the Board must consider when making a determination. The purpose of the hearing is not to 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 have been or will be met.

**APPROVAL OF AGENDA**

The Board reviewed the agenda.

**Mr. LaRochelle motioned to approve the agenda as amended. Mr. Rich seconded the motion. Motion passed, 4-0-0.**

**NEW APPLICATIONS**

<b>Case #Z22-19 Paul F. Zuzgo, LLS, Agent for Dexter &amp; Holly Brown, Owners</b>	<b>Map 5 Lot 6 116 Stockbridge Corner Road</b>	<b>Equitable Waiver of Dimension Rural (RU) Zone</b>
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An **Equitable Waiver of Dimension** is requested in Accordance with **Article 500, Section 540 B.** of the Zoning Ordinance to provide Equitable Waiver relief for the existing house which encroaches into the 25' ROW setback.

Chair Lee read the public notice into the record. The Board reviewed the application for completeness.

**Mr. LaRochelle motioned to accept the application for Case #Z22-19 as complete. Mr. Rich seconded the motion. Motion passed, 4-0-0.**

Paul Zuzgo, LLS, Agent for owners, stated they want to get the waiver and explained it would the need for the waiver came up when doing the lot line adjustment for Lots 5 and 6; he explained at that time it was discovered the house is within the setback. Mr. Zuzgo stated the house was built in 1994 and it was laid out by septic design only; there was no survey on file. He explained Stockbridge Corner Road was laid in 1852 as a width of four rods (66 feet) and all the stonewalls and iron rods do not represent that; he stated they discovered when doing a survey, that the house was within the setback.

Chair Lee noted the application indicates a different date for those being built. Mr. Zuzgo stated the correct date is 2003. He explained the mistake wasn't discovered until the surveying was done for the boundary line adjustment. Mr. Zuzgo stated it has been there since 2003 and no one was impacted to this point; abutters were notified of the existing lots. He stated the correction outweighs and detriment to the public and moving the house back would be very costly.

The Board reviewed the maps presented along with the boundary line adjustment plan. Mr. Zuzgo stated the adjustment will increase the acreage and road frontage of the lot. It was confirmed the lot has some steep sloped areas. Mr. Rich confirmed this lot line adjustment will make the lot more conforming and it will be in more compliance for a proposed garage; without the adjustment, the proposed garage would encroach a side setback.

Chair Lee opened the hearing to input from the public in favor of the proposal. None was indicated.

Chair Lee opened the hearing to input from the public in opposition of the proposal. None was indicated.

Chair Lee closed the public hearing.

***Discussion : EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:***

- 1. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, as amended, the ZBA shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the Board makes all of the following findings:*

Chair Lee stated the violation was noticed or discovered until now; he stated it has been well over 10 years that this house has been in place and no violation was noticed by any owner. The Board agreed unanimously.

- 2. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner 's agent or representative, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority:*

Mr. LaRochelle stated there were no boundary lines pulled and no survey done, it appears the septic design and going off the stonewalls was used for the setbacks when building the house. The Board agreed unanimously.

- 3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:*

Mr. Manning stated it does not constitute a nuisance or diminish property values. Mr. Rich noted no input was received from the public and agrees. Mr. LaRochelle stated the adjustment will add value. The Board agreed unanimously.

- 4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.*

Mr. Rich stated the only equitable way to correct this error would be to move the house but it would be cost prohibitive and would not be in the best interest of the applicants; nor does it deter or hinder the rest of the Stockbridge Corner community; he stated there are other homes in the area that have the same issue. The Board agreed unanimously.

**Mr. Rich motioned to approve the request for an Equitable Waiver of Dimension requested in Accordance with Article 500, Section 540 B. of the Zoning Ordinance for Map 5 Lot 6 116 Stockbridge Corner Road. Mr. Manning seconded the motion. Motion passed, 4-0-0.**

<b>Case #Z22-20</b> <b>Jeffrey L. Green, LLS, Agent for</b> <b>Joseph Darrah, Owner</b>	<b>Map 52 Lot 13</b> <b>215 Route 11D</b>	<b>Variance</b> <b>Lakeshore Residential (LR)</b> <b>Zone</b>
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A Variance to Article 300, Section 327 A. 2 of the Zoning Ordinance to permit the construction of a 26' x 30' garage that will be located 10' from the ROW/property line along Route 11D.

Chair Lee read the public notice into the record. The Board reviewed the application for completeness.

**Mr. LaRochelle motioned to accept the application for Case #Z22-20 as complete. Mr. Manning seconded the motion. Motion passed, 4-0-0.**

Jeffrey L. Green, LLS, Agent for owner, stated the parking is currently on the side of the street, within the right of way. He stated they want to put up a garage to move the parking off the street but there are steep slopes so they would need to move it closer to the right-of-way. Mr. Green stated the front setback would be 10' from the right-of-way and 21' from the edge of the asphalt pavement of the road. He stated there will be enough room to pull off the street and still get into the garage. Mr. Green explained the building can't be moved back due to steep slopes and concrete structures; there will be an 8' concrete wall at the back of the garage to keep it somewhat level with the road. He stated on the right hand side there is a paved area which is an easement to allow the neighboring house access to their driveway and he believes this is the best location and use of the property for this purpose. The proposed size of the garage is 26' by 30'. Mr. Green stated the property is between the 50 and 150' shoreline setback; where the garage is being proposed will have no impact on the vegetation; the NH DES Shoreline Permit has been applied for but not yet received. Mr. Rich noted it will be a condition of approval. Mr. LaRochelle asked if the septic system will be impacted by this. Mr. Green stated the current tank is located where the garage will be; the tank will be turned and placed in front of the house and a pump added to go back around to the leach field. It was confirmed the leach field will not be affected. A permit from NH DES will be needed to change the tank location. Mr. Rich asked what the height of the garage will be. Mr. Darrah stated it won't exceed the height of the house. Mr. Green stated the ground and the back wall, there will be 12' ceiling with a standard pitch. Mr. Darrah stated he wants to live here year-round but it's a safety issue with parking on the side of the road with plow trucks during the winter. Mr. Rich asked if any views will be impacted by the garage. Mr. Green stated the house sits up on the left side of the road and its all trees between this property and the abutting property. It was noted there are very steep slopes behind the house as well as Route 11. Mr. LaRochelle asked if there will be a second floor. Mr. Darrah stated there are no plans to finish the space. Mr. LaRochelle asked how far the house is back from the right-of-way. Mr. Green stated its about 16 to 17'.

Chair Lee opened the hearing to input from the public in favor of the proposal. None was indicated.

Chair Lee opened the hearing to input from the public in opposition of the proposal. None was indicated.

Chair Lee closed the public hearing.

***Discussion – Case #Z22-20***

*The Board must find that all the following conditions are met in order to grant the Variance:*

Chair Lee stated granting the variance **would not** be contrary to the public interest. The Board agreed unanimously.

Mr. Manning stated the request **is** in harmony with the spirit of the ordinance and the intent of the Master Plan to maintain the health, safety and character of the direct district within which it is proposed. He stated parking is difficult on the side of the road and the garage will be a safer option. The Board agreed unanimously.

Mr. Rich stated that by granting the variance, substantial justice **will be** done. He stated no evidence was heard to the contrary and knowing the contours of this particular property and the applicant's concern about safety on the side of Route 11D, it will create substantial justice for the applicant. The Board agreed unanimously.

Mr. LaRochelle stated the values of surrounding properties **will not be** diminished. There has been no evidence presented that would indicate values would be diminished. He stated all abutters have been notified and no evidence was presented that values would be diminished. The Board agreed unanimously.

Chair Lee stated that for the purposes of this subparagraph, *“unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:*

- i. 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;*
- ii. The proposed use is a reasonable one.*

Chair Lee stated the proposed use is reasonable to get vehicles off of parking on a public road way. Mr. Rich stated the topographical portion of the land and the closeness to Route 11D, it's a hardship for the applicant to do anything but what is being suggested. The Board agreed unanimously.

**Mr. LaRochelle motioned to grant the request for a Variance for Case #Z22-20 with the condition that all necessary permits from New Hampshire Department of Environmental Services be received prior to any permits being issued. Mr. Morgan seconded the motion. Motion passed, 4-0-0.**

**OTHER BUSINESS**

- 1. Previous Business:** None.

2. **New Business:** Appointment for the vice-chair seat on the ZBA.

**Mr. LaRochelle motioned to appoint Mr. Rich as Vice-Chair of the Zoning Board of Adjustment. Mr. Manning seconded the motion. Motion passed, 4-0-0.**

3. **Approval of Minutes:**

Meeting of June 2, 2022 – The Board reviewed the minutes. **Mr. LaRochelle motioned to approve the minutes as presented. Mr. Manning seconded the motion. Motion passed, 4-0-0.**

Meeting of August 4, 2022 – The Board reviewed the minutes. **Mr. Rich motioned to approve the minutes as presented. Mr. LaRochelle seconded the motion. Motion passed, 4-0-0.**

4. **Correspondence:** None.

5. **Other** – Mr. Dever stated the Town Planning sent out an email on recent legislative changes although not much affects the Board other than including “Findings of Fact” to be included on the decision. He stated the Board does a good job with Findings of Fact and this was confirmed with the Town Attorney. Mr. Dever stated it will create more work for the office staff and the deadline for the Notice of Decision is the same for the minutes.

Mr. Rich asked for an update on the Goodwin appeal. Mr. Dever stated a court date has been set and he will forward the information to the Board.

#### **ADJOURN**

**Mr. Rich motioned to adjourn. Mr. Manning seconded the motion. Motion passed, 4-0-0.**

The meeting was adjourned at 6:56PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary