

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
Public Hearing  
September 5, 2013  
Approved as amended 10/16/13**

**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 Larochele, Alternate  
Tim Morgan, Member  
Lou LaCourse, Member  
Tim Kinnon, Member  
Loring Carr, Representative, Board of Selectmen

**III. APPOINTMENT OF ALTERNATE**

**T. Morgan made a motion to appoint P. Larochele as a member for this meeting. L. LaCourse seconded the motion which passed with three 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**

**T. Morgan made a motion to approve the agenda as presented. T. Kinnon seconded the motion which passed with five votes in favor, none opposed, and no abstentions.**

**VI. NEW APPLICATIONS**

Case #Z13-11 Bruce Holmes	Special Exception Map 6 Lot 3	321 Suncook Valley Road
------------------------------	----------------------------------	-------------------------

*Bruce Holmes is proposing an area behind the greenhouses to be used for Boat Storage. This area will consist of three sections which currently have an access road. This will be outside storage only. There will be no buildings constructed. The property is located in the Rural Zone.*

P. Monziona read the case into the record. Due to a past professional relationship with Mr. Holmes, P. Monziona recused himself. He stated for the record that he felt he could still be fair and impartial, but for appearance sake, he did recues. T. Morgan took on the duties of Chair.

Bruce Holmes came forward to present the application.

Board members reviewed the application for completeness.

**T. Kinnon made a motion to accept the Application for Case #Z13-11 as complete. P. Larochelle seconded the motion which passed with four votes in favor, none opposed, and no abstentions.**

Mr. Holmes used a large plan to show the details of the application. This is a 59 acre property, part of which is in current use. There is a greenhouse business and driveways, as well as the three areas proposed for boat storage. The proposed boat storage would cover a total of 1 ½ acres. The boat storage area is not visible from the road and is buffered by a stand of white pine, which the applicant does not intend to change. There will be no changes to the lot at all except for mowing.

As part of the department head review, the fire department asked whether there would be fuel in the boat tanks. Mr. Holmes did not know for certain – the boats will be winterized elsewhere and brought to his lot for storage. The fire department also asked if any of the boats would be more than 150’ from a graveled roadway; Mr. Holmes answered that they would not. Mr. Holmes was asked how many boats he intended to store; he is uncertain of an exact number and stated that it would depend on the size of the boats. Following approval here, the applicant will go before the Planning Board to work out those details.

L. LaCourse asked if any repair or maintenance done on the lot; Mr. Holmes answered that there would not be any of that. The lot is intended strictly for storage.

T. Morgan opened the floor to public input. There was none, either in support or in opposition. Public input was closed.

The Board members decided to forego deliberation and proceed directly to the worksheet.

### **WORKSHEET**

P. Larochelle stated that a plat has been accepted in accordance with Town of Alton Ordinance 520-B. All members agreed.

T. Kinnon stated that the specific site is appropriate for the use; there is currently a business on the front portion of the property. With the buffers surrounding the proposed location of the boat storage, this is an excellent location for this type of business. T. Morgan agreed and added that the size of the property also supports this. L. LaCourse and P. Larochelle agreed.

T. Morgan stated that there is no factual evidence that property values in the district will be reduced due to incompatible uses; there was no testimony concerning property values at this hearing, but due to the fact that this proposed use is not visible from any other property or from the road, he does not expect that there will be any impact on values in the district. All members agreed.

L. LaCourse stated that there were no valid objections from abutters based on demonstrable fact; there was no testimony from abutters. All members agreed.

P. Larochelle stated that there would be no nuisance or hazard to pedestrian or vehicle traffic including the location and design of access ways and off street parking. T. Kinnon agreed and added that the access ways are

existing and will serve the purpose. T. Morgan agreed and added that the applicant stated in the application that he will contact the DOT for driveway permits. L. LaCourse agreed.

T. Kinnon stated that appropriate and adequate facilities and utilities would be provided to insure proper operation of the proposed use. Development of the site is strictly for storage; the only facilities and utilities needed are strictly for access. T. Morgan agreed and added that the application states Porta-Potties are available if necessary. L. LaCourse and P. Larochelle agreed.

T. Morgan stated that there is adequate area for safe and sanitary sewage disposal and water supply; according to the application there is a water supply for the nursery and Porta-Potties are available. All other members agreed.

L. LaCourse stated that the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan; the land is there and there is already a fully functional business there. This additional use will be behind the existing business and completely shielded from view of abutters or even people going to the existing business. P. Larochelle agreed and added that this is a perfect location for this type of business. T. Kinnon agreed. T. Morgan agreed and added that the ordinance contemplates this under a Special Exception, so it is consistent with the spirit of the ordinance.

**L. LaCourse made a motion to grant the Special Exception for Case #Z13-11, with the condition that no mechanical work is to be done. T. Kinnon seconded the motion which passed with four votes in favor, none opposed, and no abstentions.**

P. Monziona rejoined the Board and resumed his duties as Chair.

## **VIII. OTHER BUSINESS**

A. Previous Business: None

B. New Business: Rehearing Request, Case #Z13-07, Howell

Kim and Eric Johnson, along with Norma Graham, submitted a formal request for rehearing of this case, which the Board members received in their packets. The Johnson's presented; Mrs. Graham was unable to attend this meeting.

P. Monziona established that abutters do have standing to seek a rehearing, so the request is appropriate. P. Monziona asked if the request had been duly noticed in the newspaper so the applicant and public would be aware. J. Dever explained that the request appeared as part of the agenda; if the request is granted, the abutter notices will be done. P. Monziona asked if the applicant had an opportunity to know about this request; J. Dever answered that they did. P. Monziona explained that this hearing is limited to whether there should be a rehearing, and what grounds there may be for that. If a rehearing is denied, that is as far as it goes with this Board. If granted, that hearing would be scheduled for a future date.

P. Monziona addressed the Johnsons – it is his opinion that the Board should grant a rehearing in the case where the Board made a mistake, or that there are other circumstances that could not be presented at the time, but which have now come to light. Reading through the request for rehearing, he is not sure what in the request might meet those criteria.

Mrs. Johnson stated that, after reading the zoning ordinances, they feel that a Special Exception was required for this building structure set forth; the Special Exception was denied at the April, 2013 meeting. The variance was applied for and approved with the same building plan that was denied back in April because of the height of the building, and nothing changed with the actual structure. P. Monziona explained that the request for rehearing seems to be based on the fact that the same applicant was denied a Special Exception based on the fact that the building structure was going to change in dimension. The applicant then came before the Board with a Variance

request, and that request was granted. He asked Mrs. Johnson if she was saying that since the Special Exception was denied, the granting of the variance was in error, because the applicant had already been denied a Special Exception, and that being an error, this was the reason for the request for rehearing. Mrs. Johnson answered that it was.

Mrs. Johnson also stated that another issue was that at the meeting in July, the new building plan was presented the night of the meeting, and the abutters never saw it. It was not part of the file; as of Tuesday of the week of the meeting, there were no changes to the building file indicating that it was any different than the plan presented in April. She stated that for the applicant to be able to present a building plan never seen by the abutters, on the night of the meeting, was unacceptable. P. Monziona asked if there is anything about the new building plan that they would contend would enable them to present arguments to the Board that they were not permitted to present at the hearing when the variance was granted. Mrs. Johnson answered in the affirmative.

P. Monziona asked if there were any other grounds. Mrs. Johnson answered that the septic plan that was present on Building Plan 2 at the July meeting put the septic right on the edge of the road in such a way that the road level actually has to be raised to accommodate the slope; it would go up 18 inches on the Johnsons' side and down 36 inches on the Grahams' side. They are raising this road up, and this is a deeded right of way that is on the deeds and has been in existence for 80 years. Neither the Johnson's nor the Graham's agree to any changes to the road. P. Monziona asked if it is her contention that she was in any way precluded or prevented from making that point at the hearing on the variance. Mrs. Johnson answered that they made that point, but it was catch as catch can because they had not had a chance to review the plan before the meeting. P. Monziona asked if she was saying that the septic was not on the original plan for the April meeting. Mrs. Johnson stated that the application for the April meeting diverted the road onto their property, and they objected to that. Building Plan #2 raises the road in order to accommodate the slope of the septic, which they also object to.

P. Monziona asked if there were any additional grounds for the request for rehearing. Mr. Johnson cited the application prior to this one on the agenda; the applicant wanted to put a mobile home on a foundation, and it was mentioned that the septic plan seemed small for the mobile home on a foundation because the foundation could be considered a bedroom. The plan here is truly a three bedroom home, but they are calling one of the bedrooms a sitting room. P. Monziona asked if this is truly grounds for a rehearing, and if this is something that the Board missed either procedurally or factually, that would warrant a rehearing. Mr. Johnson answered that it seemed the Board had overlooked the fact that they should consider a larger septic because they might have an extra bedroom, whereas this will have a full cellar, and two bedrooms upstairs and one down, which was overlooked. They are just trying to squeeze the septic in; it is a half size septic system for a three and possibly four bedroom home. Mr. Johnson went on to say that in the zoning ordinances, it makes mention that a Special Exception needs to be done after a variance; this is on the front page of the home page, and this sequence seems to have been overlooked because the Special Exception was denied and then a variance was granted, which they are all baffled at because they are asking for a deck to go closer to the water, when all this other stuff is overlooked. It is concerning them because it impacts them, so they are doing everything they can. P. Monziona asked if the contention is that the Board overlooked the issue of the septic, and they overlooked the issue of the deck. Mr. Johnson answered yes, and added that the sequence had also been overlooked.

There is no public input, as this is strictly a Board decision. T. Kinnon can sit on this issue, and feels that he has read enough in the minutes to be able to sit.

P. Monziona explained that the fact that the Howell's, as applicants, were denied the Special Exception first, which would make sense because they were going to take a somewhat dilapidated structure and redo it, turning it into a much nicer, safer building. It would have been their choice under that circumstance to apply for a Special Exception because the new Special Exception ordinance in affect for the last year or two permits someone to do that; they can voluntarily demolish a non-conforming building. In the past, that was not allowed, so people would keep one wall and take almost the whole thing down. Now it is permitted to demolish the whole thing in favor of building a newer, safer, better structure that is better for everyone. The catch is that the new building has to be within the same dimensions as the old one. They applied for that and because the roof was going to be higher, they did not meet that, so the Special Exception was denied by the Board. Later, the

applicant realized that they would have to do it through a variance, which is their right to do. They first tried the Special Exception which was rightfully denied, and then they had a right to come back for a variance. The fact that there was first a denial of the Special Exception in no way precludes them from coming back before the Board for a Variance. That point alone, in his opinion, does not constitute grounds for a rehearing.

P. Monziona went on to say that the next point is more concerning. The applicant did submit, if he recalls correctly, some redrafted or newly detailed plans at the hearing itself. He found those to be helpful to the decision as they contained further information. A representation is being made tonight by the applicant requesting the rehearing that they were prejudiced by that fact because they didn't have a chance to see it, and had they seen it, they would have been able to present additional arguments at that hearing, that they were precluded from presenting because they were not permitted to see that. It is not unusual for the applicant to bring things to the hearing, and for the Board to consider them and use them in decisions. However, where an abutter who has standing complains that the act of doing that prejudiced or prevented them in some way from making an argument that they would otherwise have made, that concerns him as a possible grounds.

The issue of the extra bedroom being overlooked is not correct; that was carefully considered and the septic and road issues were taken into consideration. Those deal with the private rights of the individuals who have rights of way, and in P. Monziona's opinion, have nothing to do with granting or not granting the variance. If someone encroaches on someone's rights, that will be a private dispute between property owners.

P. Monziona went on to say that there are no grounds for rehearing based on the Special Exception denial, the deck issue, the septic issue, or the road issue. He is however concerned about the new plan issue. T. Morgan agreed; reasons 1 and 2 for the rehearing are without merit because they establish misunderstanding of the law as it stands. He does think there is merit under paragraph 3 because the respondents were surprised due to a lack of discovery of the documents that were presented at the hearing. Reason 4 is without merit with respect to rehearing. When it comes to a vote, he will vote to grant a rehearing based on the surprise element noted in paragraph 3.

L. LaCourse had nothing to add. P. Larochelle agreed that even though they did go over the septic plan design and how it was to be implemented, and how it was being installed, the issue is the height. Even though it was brought to their attention several times during the conversation that the 18" height was the extreme center of the septic system, not at the road, he has heard again tonight that the 18" is of concern at the road, which is clearly stated that the 18" height was the center of the septic system, not at the road. That needs to be researched again, because they are misinterpreting where that septic system height is and that it is really going to affect the road very little, if they look at the system.

T. Kinnon agreed that reasons 1, 2, and 4 do not constitute rehearing; he does have issue with drawings being presented at the night of the hearing that differ from drawings presented in the past and submitted with the application. He understands that the Board does accept material at the hearings, and that it is a good policy in general, but when it comes to something that has that much of a difference in the scope of a particular portion of the testimony, especially with regard to a septic system, which is one of the major points that is considered in any application. He does object to that material not being presented to the abutters, which would have allowed them to present stronger testimony.

P. Monziona added that the Board does allow applicants to give items at the time of the hearing, but they do so at the risk of something like this happening. He noted for the record that the applicants requesting the rehearing must establish that additional arguments would have been made had they received that drawing earlier; at the rehearing I'm going to want to see what the additional arguments are.

T. Kinnon asked if, in granting the rehearing, they can limit the rehearing to just this point. After short discussion, it was determined that even though testimony could be limited, in this case it would be wise to hear and rule on all issues. T. Kinnon stated that his only concern is that by granting the rehearing, they are encumbering the applicant to go through the entire process again, when they are basing the rehearing on one

factor. P. Monziona felt that as the Board had determined that the other grounds on the rehearing request were without merit, the applicant would not have to do anything in response.

**T. Morgan made a motion to grant a rehearing of Case #Z13-07. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.**

The date for rehearing will be October 3, 2013. This will be an agenda item; the Johnson's will be responsible for abutter notice and newspaper notice fees and will need to go to the Planning Department office no later than September 12, 2013 at 12:30 p.m., to make those arrangements.

C. Minutes: August 1, 2013

Page 3, second paragraph – in the second line, the word “and” should be changed to “any”

**L. LaCourse made a motion to approve the minutes of August 1, 2013, as amended; T. Morgan seconded the motion which passed with four votes in favor, none opposed, and one abstention (T. Kinnon).**

D. Correspondence: There was none.

#### **IX. ADJOURNMENT**

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

The meeting adjourned at 7:40 p.m.

The next regular ZBA meeting will be held on October 3, 2013, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session