

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
APPROVED MEETING MINUTES  
September 7, 2017**

The following members were present:

Steve Miller, Chairman  
Paul LaRochelle, Vice-Chairman  
Lou LaCourse, Clerk  
Paul Monziona, Member  
Tim Morgan, Member  
Frank Rich, Alternate Member

Others present:

John Dever, III, Code Enforcement Official  
Jessica A. Call, Recording Secretary

**I. CALL TO ORDER:**

Steve Miller called the meeting to order at 6:01 p.m.

**II. APPOINTMENT OF ALTERNATES:**

Steve Miller stated there was no need to appoint any alternates at this time, because a full Board was present; although, the Board would have to appoint Frank Rich later on in the meeting because Paul LaRochelle had to step down due to his professional relationship with Mr. & Mrs. Rothermel.

**III. 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 the 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 gage 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 would 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.

**IV. APPROVAL OF THE AGENDA:**

Steve Miller suggested moving the approval of the Site Walk Minutes, dated August 17, 2017, to just before Case #17-17 was called to order.

**Paul Monziona moved to accept the agenda, as amended.**

**Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).**

**Paul Monziona moved to accept the minutes from the August 17, 2017, Site Walk, as submitted.**

**Paul LaRoche seconded. Motion PASSED by a vote of (5-0-0).**

**TABLED FROM AUGUST 3, 2017, IN ORDER FOR THE BOARD TO CONDUCT A SITE WALK:**

<b>Case # Z17-17 Thomas W. Varney, P.E., Agent for Anthony &amp; Charlotte Ann Sciola</b>	<b>106 East Side Drive Map 33 Lot 8</b>	<b>Special Exception Lakeshore Residential (LR)</b>
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Present were Thomas W. Varney, P.E., Agent, and Anthony Sciola, Owner, and James Colbroth, Abutter.

Paul Monziona mentioned that at the August 3, 2017, meeting, the applicant had a chance to represent their case, and the request for a Site Walk was talked about during the Board's deliberation. He wondered if the Board was limited to a discussion of what was talked about at the Site Walk. Steve Miller stated that there were a number of questions that came up at the Site Walk and with the Board's approval, he wanted the opportunity to have them answered; the Board agreed. Tim Morgan noted that there was a submission from James Colbroth since the Site Walk.

Paul Monziona thought that public input had been closed and the only thing left to consider was the outcome of the Site Walk, therefore he was concerned that the Board received additional submissions from the public, and procedurally that submission should not be considered. He also stated that he understood Steve Miller's position in wanting to allow the questions which stemmed from the Site Walk to have the opportunity to be answered. He stated that the Board should limit their function to address only the Site Walk questions, and if the public had made any new submissions after the fact, it would reopen the case to the public a second time. Paul Monziona further mentioned that the Board did have the authority to reopen public input if the Board opted to. Paul Monziona shared that after looking at the minutes from the last meeting, he noticed that there was no formal closure of public input, therefore, the case was continued with public input still open.

**Steve Miller moved to allow any of the individuals that were at the Site Walk the opportunity to ask the questions they had that they were not able to get answers to at that time. He also stated that the Board received some information from Mr. Colbroth that the Board should take into consideration.**

**Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).**

Thomas W. Varney, P.E., stated that he had no concerns regarding the Site Walk, and was willing to answer any questions. There were no other questions from individuals who attended the Site Walk.

Steve Miller asked Thomas W. Varney, P.E., for a closing statement. Thomas W. Varney, P.E., thought that they proved the requirements for a Special Exception at the August 3, 2017, meeting and at the August 17, 2017, Site Walk, and that they did not have any other issues that needed to be addressed.

Steve Miller closed public input.

Paul Monziona stated that according to James Colbroth's email, he was concerned that Anthony Sciola should have applied under Article 320B.2.d. "A deck, porch or patio shall not be converted to a living space if same is located partially or wholly within any setback area. John Dever, III, stated that the historical use of the property, in regards to the enclosed porch in the front of the building, which was within the setback, had been

used as living space all along, and was not solely used as a porch; therefore the new house could encompass the porch as part of the building. Paul Monzione clarified that Anthony Sciola decided to apply under Article 320B.2.c., and did not include Article 320B.2.d, based on the information provided by John Dever, III.

Steve Miller noted that the structure was currently seasonal, but Anthony Sciola planned on residing there year round. Paul Monzione stated that town water could be provided year round to that structure, and in fact, on that side of town, residents could opt for either seasonal or year round water. He further clarified that the water was not the determining factor in whether that structure was deemed “seasonal.” Paul Monzione thought that changing the use from seasonal to year round did not affect Anthony Sciola for a Special Exception, because the application was submitted under Article 320B.2.c., and he did not think there were any restrictions on the use becoming a year round residence.

Steve Miller stated that at the Site Walk, he could see that there was only about a 10-15% loss of sight from the back porch and thought it was not a significant percentage. Tim Morgan thought that what Anthony Sciola submitted was acceptable under Article 320B.2.c., and he felt that it was not a significant loss of sight. Paul LaRochelle stated that after looking through James Colbroth’s window, in his opinion, he thought the line of sight was a loss of only 5-10 degrees of angle and he did not have a problem with the application as submitted. Lou LaCourse stated the only problem he had with this application was the possible loss of sight. He stated that at the Site Walk, he thought the line of sight was a minimal filtered loss of view. Paul Monzione stated that James Colbroth was up front and accurate in his description of his line of sight, he also mentioned that Anthony Sciola’s current house was in disrepair and by having a new house built, it would impact his house in a positive way.

John Dever, III, stated that he responded to some of the questions in James Colbroth’s email that he could answer, but one of the questions he could not answer was the potential for runoff and erosion. John Dever, III, stated that the property was subjected to the Shoreland Protection Program, so it would need a Shoreland Impact Permit, which addressed temporary and permanent stormwater management procedures, and was something that he required in hand prior to issuing a building permit; this was something that he monitored during construction.

Frank Rich thought that since James Colbroth had some questions that still needed to be answered, the Board should require those questions to be answered by Anthony Sciola for the record before they made any decisions.

**Paul Monzione moved to reopen public input limited only to the specific questions that James Colbroth brought up in his email to John Dever, III, Code Official, on September 9, 2017, to be answered by Anthony Sciola’s Agent, Thomas W. Varney, P.E. Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

Steve Miller had Thomas W. Varney, P.E., address questions #4 and #6 only.

#4. Catch basin. Thomas W. Varney, P.E., stated there was a catch basin and a culvert alongside East Side Drive. He stated that the Shoreland Permit, which was approved by the State, addressed trees and stormwater runoff. The lot was over 30% lot size coverage, which required engineering calculations; therefore, he submitted a management plan with calculations for runoff to the State, and it was approved. He stated that he had an inspection checklist, which he usually gave to applicants so that they could document the clean out of the catch basin, but Alton did not require that. He noted that if the Board wanted him to, he would provide a checklist to Anthony Sciola.

#6. Drainage. Thomas W. Varney, P.E., stated that there was some erosion on site, but when construction was completed, the property would be put back according to the plan.

Steve Miller moved the Board onto the worksheet.

Lou LaCourse stated that the plat **had been** accepted in accordance with the Town of Alton Zoning Ordinance of 520B. He stated it was attached to the application.

All Board Members agreed.

Steve Miller stated that the specific site **is** an appropriate location for the use. He stated it was in the Lakeshore Residential zone and what was being presented was a Lakeshore Residential home. Paul Monziona stated that the use was not changing.

All Board Members agreed.

Paul LaRochelle stated that factual evidence **is not** found that the property values in the district would be reduced due to incompatible land uses. He stated that it would be an improvement to surrounding properties and the property owner himself. Tim Morgan stated that the land use remained the same. Paul Monziona stated that James Colbroth stated, at the August meeting, that it would affect his property value in a positive way. Lou LaCourse stated that there was no factual evidence given to indicate the property values would change either way.

All Board Members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. He stated that there was an objection from James Colbroth, which was the reason for the Site Walk, but he thought that the objection was not sufficiently valid to warrant turning down the Special Exception; therefore, no "valid" objection. Paul Monziona agreed with Tim Morgan and thought the Site Walk was extremely helpful. Lou LaCourse agreed, and stated that the view was a filtered view, if any. Steve Miller believed it was a minimis objection and after listening to testimony of the objection, it was not particularly strong in either tone or intonation. Paul LaRochelle agreed and pointed out that he appreciated the Board's point of view and James Colbroth's concerns, but after the Site Walk, it was deemed not significant.

All Board Members agreed.

Paul Monziona stated that 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. He stated that there was nothing about construction that would create a nuisance or cause a serious hazard to either pedestrian or vehicular traffic, and it was actually going to be improved.

All Board Members agreed.

Lou LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of proposed use or structure as stipulated. He stated that construction would be according to State and Town regulations.

All Board Members agreed.

Steve Miller stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that the structure was being built on the same footprint and it was being changed from a seasonal to a year round residence, and no additional bedrooms were being added. Lou LaCourse stated that a new septic system was built in 2015.

All Board Members agreed.

Paul LaRochelle stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. He stated that the property was consistent with other properties in the area, and Anthony Sciola was improving his property, which was consistent with the Master Plan. Tim Morgan stated that the section that this application was brought forth under considered this type of project and complied with the Master Plan. Paul Monziona stated that the use did not change and the structure was being improved. Lou LaCourse stated that it was a residential area with a residential building being constructed. Steve Miller stated that the improvements were according to the Master Plan.

All Board Members agreed.

**Tim Morgan moved to grant the Special Exception for Case # Z17-17, with the condition that Thomas W. Varney, P.E., provide Anthony Sciola with the drainage maintenance checklist for cleaning out the catch basin.**

**Paul Monziona seconded. Motion PASSED by a vote of (5-0-0).**

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**V. NEW APPLICATIONS:**

<b>Case #Z17-19 Regina A. Nadeau, Esq., Agent for Kevin D. &amp; Sandra L. Rothermel</b>	<b>East Side Drive Map 33 Lot 87-1</b>	<b>Variance Lakeshore Residential (LR)</b>
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<b>Case #Z17-20 Regina A. Nadeau, Esq., Agent for Kevin D. &amp; Sandra L. Rothermel</b>	<b>East Side Drive Map 33 Lot 87-1</b>	<b>Variance Lakeshore Residential (LR)</b>
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Present were Regina A. Nadeau, Esq., Agent, and Kevin D. & Sandra L. Rothermel, Owners, Cathy & Dom DeFlumeri, Abutters.

Paul LaRochelle shared that he had worked professionally for the applicants in the past and recused himself from deliberating on these cases.

**Tim Morgan moved to appoint Frank Rich to sit in as a full-voting member on these cases.**

**Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).**

John Dever, III, noted that the exhibits were the same for Cases # 17-19 and 17-20. Steve Miller asked Regina A. Nadeau, Esq., how she wanted to present the two cases; she thought hearing the cases simultaneously would be best.

**Lou LaCourse moved to accept Cases # Z17-19 and Z17-20 as complete.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

Regina A. Nadeau, Esq., stated that both Variance applications pertained to the same parcel of land. She stated that originally, the Rothermel's property used to be a right of way that five (5) other properties used to access. She stated that a prior owner initially obtained a permit for a retaining wall, and without the proper authority, ended up also building wing walls, with the end result looking somewhat like a foundation. She thought that the only thing that could be built on this piece of property would be a garage.

Regina A. Nadeau, Esq., noted there were two (2) issues. One issue was that the foundation as constructed was located within 2.78 feet of the northerly property line and within .68 feet of the southerly property line. She mentioned that the pictures that were submitted with the applications showed that from the north, the foundation was hidden by a significant amount of tree vegetation and the foundation walls were tied into the embankment retaining wall and help support part of the neighbor's retaining wall. She shared that there were letters of support to these applications from all of the property owners that used that roadway. She stated that the garage would be 25-26 feet high to the ridge, and the back would be about 18 feet in height, which was much smaller

than the regulation that stated a 35-foot maximum height. With regard to granting the Variances, it should be in the interest of the town to use the property as proposed.

Tim Morgan noted that the applicants could have submitted an application for a Lot Line Adjustment to the Planning Board; therefore, eliminating the request for the use Variance. Regina A. Nadeau, Esq., stated that they could have. She explained that the Rothermel's have three (3) parcels of land in that area, Lot 21, a lot that was across the street on the waterfront, and there was the lot in question. If the Rothermel's decided to sell the waterfront lot, they would still be able to have storage in the proposed garage.

Steve Miller asked if the garage would block anyone's view; Regina A. Nadeau, Esq., stated, no. She noted that there was a band of trees located behind the garage. Steve Miller asked about utilities; Regina A. Nadeau, Esq., stated there would be electricity only. Steve Miller asked if the garage could be turned into another residence; Regina A. Nadeau, Esq., stated that if they did, they would come back to the ZBA. She also shared that the property already held a septic system, so they probably could not.

Lou LaCourse noted that the wall was built 17 years ago and asked if there was a request for a Variance by the prior owner. John Dever, III, stated that the previous owners did not come in and get the proper approvals.

Paul Monziona thought that what the applicants were coming before the board for was they were asking to build a garage on an illegal structure that was in the middle of a right-of-way. He stated that he was not sure if anything since the 1800's stated that the right-of-way was no longer an actual right-of-way. Regina A. Nadeau, Esq., stated it was a paper road and the right-of-way did not have a name to the road. She noted that when looking at Lot 86, the access had always been up Courtyard Circle then down to Lot 86, and then pointed out that there was a tree line that appeared to have been there for more than 20 years. She was not sure if the Rothermel's had received releases from all of the other parties. Paul Monziona was wary about the ZBA approving an application that would allow a structure to be built in the middle of a right-of-way.

Steve Miller asked Regina A. Nadeau, Esq., what the law was regarding abandonment of a right-of-way. She explained that the law was corollary of what adverse possession was. Adverse possession was when someone squatted on someone else's land and after 20 years, that person claimed that they used it so much to their own benefit, contrary to the owner's benefit, that person could go to court and have a judge order the owner to give that person the land. The converse of that would be that if someone had a right to use a piece of property, and that person did not use it for 20 years, then that would be a presumption that the owners had abandoned the property. Steve Miller asked if a ZBA could determine, on its own, that a right-of-way had been abandoned and give that right away to another individual, Regina A. Nadeau, Esq., stated, no, it would require a judicial action.

Frank Rich stated that the Rothermel's had a home on Lot 22, and they owned Lots 22 and 25. Regina A. Nadeau, Esq., stated that they did not have a home on Lot 22, which was the lakeside of East Side Drive, but they did have dockage on it and a landing. She stated that they owned Lot 21, which was to the south side of the right-of-way, and they did not own Lots 25 or 26. Frank Rich stated that when looking at the aerial view, the location of the foundation was right next to Lot 26. He then asked Regina A. Nadeau, Esq., if Torrelli Terrace was used as an access, she stated only Lots 25 and 26 used Torrelli Terrace. She noted that the house on Lot 26 was partially built into Torrelli Terrace and had been there for years. Frank Rich shared that he did not see a roadway going to either Lot 25 or 26. Regina A. Nadeau, Esq., stated that there was some tree overhang that blocked the view of the Terrace. Regina A. Nadeau, Esq., mentioned that in order to get to their septic they would go up Courtyard Circle then down Winter Way.

Steve Miller asked the Board if they had any other questions; there were none.

Steve Miller opened public input.

Dom DeFlumeri, Abutter, came to the table to speak in favor of the application. He stated that he had no problems or issues with the Rothermel's putting up a garage. He also shared that the Rothermel's purchased the property about two (2) years ago and had been doing an excellent job with fixing up the house, and he wanted the Board to let them continue.

Steve Miller closed public input.

## **DISCUSSION:**

Paul Monzione thought it would be helpful to seek legal guidance from Jim Sessler, Town Counsel. He had some legal issues that were troubling, but thought that it was the best use of a situation. The issues he had were the fact that the ZBA was presented with an application and he wanted to know whether the ZBA could approve someone to continue to complete the construction of a structure that should not have been there in the first place without a building permit or a Variance, and that it appeared to be in a right-of-way. Tim Morgan asked if the Board went ahead with the Variance, that they ensure a caveat that the ZBA in no way comments on the title. Paul Monzione stated that he was not concerned about liability. Frank Rich stated that if the Rothermel's were prepared to defend themselves at a later point, if someone made an issue out of them building within the right-of-way, they had been given full warning that the Board was not liable for anything.

John Dever, III, stated that when the Rothermel's purchased Lots 21, 25, 22, and 87-1, they installed new septic systems for Lots 21 and 25. He stated that when the septic designer provided the plans for the septic system, the application included easements to allow the building of those septic systems on Lot 87-1.

Paul Monzione stated again that seeking Jim Sessler, Town Counsel's, advice was probably the way to go because he had a hard time answering the criteria for the two (2) Variances. Steve Miller thought the Board should follow Paul Monzione's suggestion, because he was conflicted about property rights, whether or not the right-of-way was abandoned, and he thought that it would not be in harmony with the spirit of the Master Plan, that substantial justice would not be done, and whether or not it would diminish the value of surrounding properties.

Regina A. Nadeau, Esq., asked the Board if they would allow her to share title work with Jim Sessler, Town Counsel. Paul Monzione welcomed the opportunity for both attorneys to talk to each other. Frank Rich thought it was a good idea because Regina A. Nadeau, Esq., was already in possession of the application and it would alleviate the process of Jim Sessler having to review the whole case.

**Paul Monzione moved to table Cases #Z17-19 and Z17-20 to the next Board meeting on October 5, 2017, to allow the Board to seek legal counsel, and to allow the Rothermel's attorney, Regina A. Nadeau, Esq., an opportunity to talk to Jim Sessler, Town Counsel, regarding the legal issues brought up during discussion.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

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**Steve Miller moved to have Paul LaRochelle come back to the Board's table, and to have Frank Rich go back to sitting in as an alternate.**

**Paul Monzione seconded. Motion PASSED by a vote of (4-0-0).**

## **VI. OTHER BUSINESS**

1. Previous Business: Update the Town of Alton's ZBA By-Laws and the Application of Appeal, draft dated August 3, 2017, and the Application for Extension of Decision, draft dated September 1, 2017.

Steve Miller suggested tabling the update of the Town of Alton's ZBA By-Laws, the Application of Appeal, and the Application for Extension of Decision to the next meeting on October 5, 2017.

**Paul Monziona moved to table the updates to the next meeting on October 5, 2017.**

**Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).**

2. New Business:

3. Approval of Meeting Minutes: August 3, 2017, ZBA meeting

Paul Monziona noted one correction on Page 5, first full paragraph, change "raise" to "raze".

**Paul Monziona moved to accept the minutes from August 3, 2017, as amended.**

**Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).**

4. Correspondence: None.

## **VII. DISCUSSION**

1. John Dever, III, shared with the Board that Jessica A. Call will no longer be taking the minutes for the ZBA due to a conflict. He shared that Carolyn Schaeffner will be taking the minutes in her place. Carolyn Schaeffner currently takes the minutes for the Town's Conservation Commission and the Budget Committee, and had taken minutes in the past for both the Planning and Zoning Boards.

2. Paul LaRochelle let the Board know that he was surprised to hear that no one suggested a Site Walk for the Rothermel's case. He thought that section of town would be best to look at in order to provide the best decision. He suggested that the Board members look at the property and surrounding area. John Dever, III, stated that if a Board member chose to look at the property on their own, they could if they wanted to. Steve Miller asked John Dever, III, to contact the Rothermel's to let them know that any member of the ZBA, may at some time before the next meeting, be walking the property and if they had an issue with that, to contact the office.

## **VIII. ADJOURNMENT**

**At 8:00 p.m., Paul Monziona moved to adjourn.**

**Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

Respectfully submitted,

Jessica A. Call  
Recording Secretary