

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING AGENDA
Thursday, October 2, 2025, at 6:00 P.M.
Alton Town Hall**

REVISED MINUTES 10/30/2025

MEMBERS PRESENT

Frank Rich, Chair (arrived after case #1)
Tom Lee, Vice Chair
Paul LaRochelle
Tim Morgan
Joe Mankus

OTHERS PRESENT

Tom Varney, Engineer	Jason Reimers, Attorney	Peter and Linda Harris
Kristian Johnson	Jacqueline Dodge	Dick Shea
Paul Monzione	Johnny Dodge	David and Kelly Brown
Josh Thibeu, Engineer	Donna Reilly	Rick Lundy
Stephanie Richard, Engineer	Dan Reilly	Joe McDonald
Kathy Fairman	David Allwine	Lisa Bald
David & Marilyn Slade	Anne Marie Allwine	Lisa & Ray Fortin
Bob & Catherine Gould	Jeff Hertel	Stephan Nix, Attorney
Christopher Boldt, Attorney	Chris Whalen	Lori Ann Thomas
Maureen Kalfas	Lisa Nicastro	John Goodrich
John Jonasch	Anthony Jones	Mark DeRoy
Sherri Johnson	Mary Johnson	Wayne Long
Ray & Lisa Fortin	Maureen Parker	

CALL TO ORDER

Vice Chair Tom Lee in for Chair on first case. Vice Chair called the meeting to order at 6:02 PM.

INTRODUCTION OF BOARD MEMBERS

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

APPOINTMENT OF ALTERNATES

No alternates 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

Ms. Ditri suggested rearranging the order of the cases so that number one, which is a continued application, could be heard last so that all Board Members will be present.

Motion: To amend the agenda case # 1 to be moved to #3, case # 2 to be moved # 1, and case #3 to be moved to #2.

Motion made by Mr. LaRochelle. Second by Mr. Morgan. Vote was unanimous.

1. NEW APPLICATIONS:

Case #Z25-35 Varney Engineering, LLC, Tom Varney, Agent for Thane LLC, Kristian Johnson, Manager	Map 11 Lot 28-13 Swan Lake Trail	Special Exception Residential Rural (RR) Zone
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A **Special Exception** is requested for Article 400 Section 401.D.17 to permit a Contractor's Yard in the Residential Rural District.

MOTION: To accept the application for Case Z25-35 as complete.

Motion by Mr. LaRochelle. Second by Mr. Morgan. Vote was unanimous.

Case #Z25-35

Tom Varney stated Kristian Johnson bought the property for lawn care business. There is a 42 ft x 95 ft metal barn that existed on the property. The barn is used for storage of lawn mowers and landscaping equipment. Several snowplows are stored outside. 5 employees meet in the morning to go to job sites. No worker remains on site. Compost pile on site for lawn clippings and leaves. No materials for sale on site. No signs, well, septic, or electricity available on site. PB approval is required for a contractor's yard. Requesting a special exemption for a contractor's yard on Swan Lake Trail located between Lily Pond Road and Miramichie Hill Road off Route 28. Swan Lake Trail is 10 lot subdivision done in 1987. The lot is 16 acres and is the residual lot from the subdivision. It is on a Town road. It has a dirt driveway with a gate which is open during the day. No heavy equipment is stored there. Tom Varney went over the plans. He stated it is not a good location for residential use but is for this use. Vice Chair Lee asked if there was any other access to the property. Kristian Johnson stated there is a trail that comes up over the hill, and he is an abutter and rides his 4-wheeler up there. The trail ends at this property. Mr. Mankus asked about the composting pile. Kristian Johnson explained there is hole that they dump the leaves in and as they compost he spreads them out. Mr. LaRochelle asked about the buffer around the building. Kristian Johnson stated the building is not visible through the trees in summertime. Mr. Morgan asked about the covenants in the deed that stated no non-residential use allowed. Kristian Johnson stated that the covenants expired after 10 years but that part was omitted from his deed. Vice Chair Lee asked about the 10 parking spaces on the plan. Mr. LaRochelle asked if repairs would be on the premises. Kristian Johnson stated most of his repairs are done by Mark Dame. Mr. LaRochelle also asked if anything was done with stockpiling sand and salt. Kristian said no. Vice Chair Lee asked about plowing in the winter. Kristian stated the employees take the trucks home and keep them at their homes through the winter months. Vice Chair Lee stated the Conservation Commission noted that Kristian Johnson had already received a Notice of Decision from the Alton Fire Department on October 2, 2025. Tom Varney stated it was a draft note. The Commission commented the application states 15 parking spaces and the plan shows 10 spaces. It has not been determined how many spaces will be required. Tom Varney stated that it is a Planning Board issue. The narrative states a compost pile on site and the drawing shows a compost pile off site, which is correct. Kristian Johnson stated it is self-contained. Joe Mankus asked if the brush and compost was rotated out. Kristian Johnson stated they turn the pile every time they add to it.

Public Input:

David Allwine stated that he is closest to the property and there is little to no noise and the vehicles are not big enough to contribute to traffic. He and his wife are in favor of the project.

Chris Whallen stated it has always been a quiet peaceful area and Kristian's operation does not have a negative impact. He and his wife are in favor.

Johnny Dodge handed out 2 sections of the Master Plan. He is opposed to the proposed project because 1) the site is not an appropriate location 2) the narrative states Mr. Johnson bought the property for his lawn care business, 3) Mr. Dodge believes Mr. Johnson was aware that the lots on Swan Lake Trail were for residential use only. 4) The narrative states there was already a 42 x 95 metal barn that was used for storing equipment however the Town allowed the barn to be built for personal use because the previous owner stored his personal antique vehicles in it. 5) there is undue nuisance or serious hazard to pedestrians and vehicular traffic including the location and design of access ways. Mr. Dodge proceeded to show the Board members time & date stamped clips of the traffic being generated on Swan Lake Trail and explained what they were looking at. He also did a traffic study and presented a spread sheet showing the results of the study. He stated he would like to appeal to the ZBA to consider that this is an entirely different situation than what a special exception for a contractor's yard would be on, for example, Old Wolfeboro Road. It is a dead-end cul-de-sac residential subdivision which was created solely for the construction of residential single-family homes as referenced in every deed of the Swan Lake Trail subdivision. Many of the homeowners in the subdivision are most likely unaware of the potential negative impacts a commercial business operating in our exclusively single-family neighborhood cause. He then read the definition of a contractor's yard. He acknowledged that several of the uses are not being asked for but stated what if Kristian Johnson's business grows and changes as it has in the last five years. It has gone from

a small lawn mowing service to a landscaping company and bigger equipment. The barn was originally used for personal use and now is storage for commercial equipment. He stated the use is not in the spirit of the ordinance or the Master Plan. He read the parts of the Master Plan that he earlier handed to the Board members. He thanked the Board for their time. Ms. Ditri informed the Board there were a couple of letters that had been received.

Jacqueline Dodge spoke as an abutter directly across the street from the right of way used by the vehicles. She handed out packets of information to the Board members. She stated that the occupants of the vehicles exiting the subject property face directly into her front windows and it is a major infringement of her privacy. It has been impacting the enjoyment of her home and severing the rural character of the entire single-family subdivision. This is degrading and negatively impacting the entire neighborhood. She proceeded to show the Board photos of her house and the right of way. She explained that the business runs different times of day and sometimes on Saturdays. It runs from April to October. She tallied the traffic from July to September. She explained she noticed an increase in the number of commercial vehicles coming and going on Swan Lake Trail in April of 2025 and became concerned. In June she and her husband went to the Town Hall to find out what approvals were on file and found there were none. They also found out Mr. Johnson was in the process of seeking approval for a contractor's yard which you need a Special Exception. She started logging the traffic from her security blink clips which is the information her husband presented. She pointed out that Mr. Johnson had been running his business for the last four years without any approval or oversight. She presented the opinions of real estate brokers of the negative impact to the value of homes in the area especially those closest to the business. She also repeated some of the information covered by her husband earlier in the meeting.

Johnny Dodge read a letter from Patrick & Lauren Quann who have resided in Swan Lake Trail for 13 years and are opposed to the Special Exception. They are fully against the commercial business in this area for the same reasons as previously stated.

Vice Chair Lee closed the public input.

Vice Chair Lee read a letter from Terry Harlacher in support of the application.

Rebuttal:

Tom Varney stated that the increase in the traffic from 10 cars per home is contributed to delivery trucks and vans from Amazon, UPS, and Fed Ex. Kristian Johnson's vehicles are pick-up trucks and 1- and 1.5-ton dump trucks. He has been there for five years. The road is a dead end and comes out on Route 28. Tom Varney stated that an average of 10 cars per home per day is expected so that would mean 120 vehicles not including the increase from delivery vehicles. He went on to explain why the law for Contractor's Yard was created and stated that Kristian Johnson is within the realm of what is allowed.

Kristian Johnson stated the Dodge's moved in about 1 ½ years ago and they knew there was a landscape business across the street from them. The reason he has to apply for a contractor's yard is because there is nothing else in the zoning ordinance to fit his business.

Vice Chair Lee thanked everyone who spoke and stated that it is important for people to speak up and that it helps the Board in making their decisions.

BOARD DELIBERATION

Discussion – Case #Z25-35

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

Chair Rich recused himself from the voting because he was not there for the beginning of the presentation.

Vice Chair Lee stated a plat was submitted in accordance with the appropriate criteria Article 500 Section 520B. The Board agreed.

Mr. LaRochelle stated the specific site is an appropriate location for the use. He stated going by the appropriateness of being in the Town or in the area of 28 I think this area is acceptable in the area where this would be operating out of because this type of business is a lawn care business more than a contractor's yard. The warranty deed covenant was a concern to several of the Board members. 3-No 1-Yes

Mr. Morgan stated property values in the district will not be reduced. He stated the evidence presented about the property value rather than being factual was opinion. However, the fact there's a violation of a covenant which would have been of some value to the people when they purchased their homes or their lots and feels there would be a reduction in value due to incompatible land use or violation of covenants from the other abutting properties. The Board agreed.

Mr. Mankus stated there is valid objection from abutters based on demonstrable facts and I think those valid objections were presented very non-emotionally and very well thought out. The Board agreed.

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Vice Chair Lee stated there is undue nuisance. This is a cul-de-sac neighborhood. Speaking in regards to nuisance, this was first portrayed as people coming to work, get the equipment and leave. And then you could see there was traffic all day long. And I understand percentages of the traffic, households, number of cars per household. To Tom’s point as far as delivery vehicles etc. those percentages can be swayed either way, but I am looking firsthand at it and looking at the layout of this cul-de-sac. I believe there is undue nuisance. Mr. LaRochelle disagreed. He felt the vehicles coming and going were respectful of the neighborhood. 3-Yes 1-No

Mr. LaRochelle stated there is no current electricity in this building. There is no septic system and no water in this building and it was only proposed to possibly bring in electricity only. The Board agreed.

Mr. Morgan stated there is currently no water or sewage addressed in this proposal. It’s not an issue. The Board agreed.

Mr. Mankus stated that it is consistent with the spirit of the Zoning Ordinance and the Master Plan. Vice Chair Lee disagreed. He didn’t feel the spirit of the Zoning Ordinance or the Master Plan was to allow commercial use in a residential area. 2-Yes 2-No

Vice Chair Lee – So a tally for the special exception worksheet acceptance it was unanimous 4-0. Yes. Appropriateness. It was one vote for appropriateness and three against. 3-1 Against. Value it was unanimous. 4-0 Against Abutters it was unanimous. 4-0 Against. Nuisance 3-1 Against Facilities unanimous 4-0 yes sewage all in agreement for yes 4-0 yes Intent split 2-2. 2 for 2 against.

Motion: To deny the Special Exception request for application Z25-35 for a special exception from Article 400 Section 401.D.17 to permit a contractor’s yard.

Motion made by Mr. Morgan. Second by Mr. Mankus. Motion passed unanimously.

Case #Z25-36 Changing Seasons Engineering PLLC, Stephanie Richard, Agent for Richard Lundy, Owner	Map 15 Lot 9-3-1 Miramichie Hill Road	Special Exception Residential Rural (RR) Zone
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A Special Exception is requested for Article 400 Section 401.D.17 to permit a Contractor’s Yard in the Residential Rural Zone. .

Chair Rich thanked Vice Chair Lee for chairing earlier and assumed the chair.

Case #Z25-36

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

Motion: To accept the application of Case #Z25-36 as complete.

Motion made by Vice Chair Lee, second by Paul LaRochelle. Vote was unanimous.

Ms. Richard, representative for the applicant, stated Mr. Lundy has an excavating business and is the owner of the lot on the corner of Route 28 and Miramichie Hill Road and is looking to build a yard there to keep all his equipment at. He wants to build a 4-bay garage with the rest of the lot for parking and stockpiles. Stormwater management is proposed along the Route 28 frontage. She stated there will be wooded buffers maintained around the outside and Mr. Lundy plans to build berms with vegetation on top.

Chair Rich asked where the lot is in reference to the self-storage for clarification.

Mr. LaRochelle asked if the proposed driveway was directly across from the abutters.

Mr. Lundy said the entrance was already in. The building will be about 52 ft from Miramichie Hill Road. The proposed building is 50 x 100 and approximately 26 ft high. The materials stored on the lot are for Mr. Lundy’s use, not for sale to others.

Mr. Lee asked if there would be 20 vehicles on the property. Mr. Lundy indicated that is accurate. Ms. Richard stated there is a survey plan from Norway Plains that might answer some of their questions.

Chair Rich asked if the entire lot is going to be buffered. Ms. Richard said the berms are shown on the plan and there will be wooded buffers maintained on the other sides of the property. Mr. Rich asked if where the proposed infiltration basin is, is going

to be left open. He asked if there will be any treat area on both sides of it and with the setbacks from Route 28. Ms. Richard said yes, that is shown from the property line. Chair Rich asked how far the driveway is from Miramichie. Ms. Richard said about 400 ft. Chair Rich asked about the width of the driveway. Mr. Lundy stated it will be 12 to 14 ft wide.

Mr. Mankus asked if Route 28 could be used for the driveway and Mr. Lundy said no. The State will not allow a curb cut. Mr. Mankus questioned the width of Miramichie Hill Road. Mr. Lundy said the Town just paved it which is usually 20 ft wide with 2 ft wide shoulders. It is two cars wide.

Mr. Lee asked if there were any abutters with homes. Ms. Richard stated there are 2 on the opposite side of the road.

Chair Rich opened the meeting to input from the public.

Public Input:

Joe McDonald from Lily Pond Road felt it is an ideal spot for this. He stated there is no night traffic really, no affect except during the day and it is on a Town road.

Ms. Fairman lives at 41 Miramichie Hill Road and is an abutter. She pointed out on the plan where she lives. She stated she had been asked to read a letter signed by neighbors and abutters in the area. She read off the names of all the signers of the letter. The letter states One -the specific site is not an appropriate location for the use for two reasons. 1) Miramichie Hill Road is less than a quarter mile long and is a wholly residential street with seven year-round homes in keeping with its designation as a rural residential zone. 2) Both Miramichie Hill Road and Old Wolfeboro Road are posted for several weeks every spring with a weight limit of 6 tons to prevent damage to the roads during spring thaw. Two- property value on Miramichie Hill Road would decline if this use is permitted on this site. 3- permitting a contractor's yard in this location will present an undue nuisance and serious hazards to pedestrians, residents, and vehicular traffic. The letter further stated they would like to point out there is no greater community need for a contractor's yard in this part of town. There are presently two located less than a half mile away on the road to the Alton Recycling Center, a more appropriate and safe location not in a residential neighborhood. She concluded on a personal note stating she has been a small business owner for over 40 years. Her family has lived on Miramichie Hill Road since 1954. She has been a resident of the Town for over 50 years. She has served for the last 15 years on a local economic development committee. She understands the importance of small businesses and supports them whenever she can. However, she cannot support this one as it does not meet the criteria for a special exception.

Mr. Slade also spoke against a contractor's yard. He expressed the same concerns as presented about the entrance onto Route 28. He claimed that over the past several months Mr. Lundy has been operating on Mr. Hertel's land and presented photos. He said the people in the area do not have to speculate if there is going to be noise, dust, and disruption because it is happening. Ms. Bald said there is no really nice buffer anymore because the previous owner stripped most of the trees. She reiterated the information in the letter that was read to the Board. She also stated that the trucks shake the house, and it has been extremely disruptive. Ms. Gould is an abutter and reiterated the same comments made by Ms. Bald. Ms. Fortin stated she was a school bus driver and used to go down Miramichie Hill Road to pick up students. The school district determined it was too dangerous for the bus to pull out onto Route 28. On another point the driveway has already been stoned and laid out. Mr. Fortin reiterated the concerns about noise. Mr. Lee read a letter into the record from Rob and Kathy Secinaro objecting to the contractor yard.

Chair Rich closed the public input.

Rebuttal:

Mr. Lundy explained that the work on Mr. Hertel's self-storage lot was finishing the job. He is not at his lot all day long. They are on job sites. As far as the entrance on to Route 28 goes, he can take a right onto the road and come out on Old Wolfeboro Road. He also explained that he had Town approval to put in the entrance to his property. Mr. Lee asked Mr. Lundy if he was contracted to do the self-storage job for Mr. Hertel. Mr. Lundy said yes. The hours of operation were reviewed and Mr. Lundy stated that if those were the hours he was limited to he would follow them. He stated that not that many years ago the piece of land was zoned for a contractor's yard. Ms. Richard stated that Mr. Lundy is used to the roads being posted in the spring and will follow the rules of the town. She also said the trees were cut years ago and the vegetation is growing. She stated that Mr. Lundy needs a place to store his equipment. Mr. Mankus asked if Mr. Lundy was planning on crushing, storing, and washing stone. Mr. Lundy said the only thing he does is screen loam twice a year. He does not crush gravel. He explained that he buys gravel and takes it to the job sites. Mr. LaRoche asked how many times a day would they be going in and out. Mr. Lundy stated that most of the time the trucks go to the pit, and he buys material, and it goes straight to the job. He stated that sometimes on a rainy day or on a day that one or two of the trucks are not busy he will get some gravel to stockpile. He does this so he has some on hand if it is needed. He stated that 90% of the time the trucks leave in the morning and don't come back until night. Mr. LaRoche asked if repairs on the trucks would be done inside the building. Chair Rich asked if the Board approved this would he still have to go to the Planning Board. Ms. Richard said yes, they need to go to the Planning Board. He asked if they had applied for a

273 septic system. Ms. Richard said they have not applied but they have done some test pits.

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275 **Discussion: Case #Z25-36**

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

277 Mr. Morgan stated a plat has been submitted in accordance with the appropriate criterion Article 500 Section 520B. The Board
278 agreed.

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280 Mr. LaRochelle stated the specific site in his opinion is an appropriate location for the use. He believes this is an appropriate
281 location because again this is something of an operation that can be done in the area. He believes it can be done neatly and clean
282 if it's done appropriately and those things would be imposed on the contractor by the Planning Board. Mr. Morgan and Mr.
283 Mankus disagreed based on the fact it is a quiet residential area and believes this business is incompatible with that. Chair Rich
284 agreed with Mr. LaRochelle and felt it is appropriate. Vice Chair Lee also agreed it is an appropriate location. 3-Yes 2-No

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286 Mr. Morgan stated factual evidence is not found that the property value in the district will be reduced. There is very little
287 testimony with respect to property values and none of it was factual. The Board agreed.

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289 Mr. Mankus stated there is valid objection from abutters based on demonstrable fact. He stated all the abutters object to it. Chair
290 Rich disagreed. He stated that although there were objections, he did not know if they were valid objections based on
291 demonstrable facts. 3-Yes 2-No

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293 Chair Rich stated there is no undue nuisance or serious hazard to traffic based on what has been demonstrated. There are
294 different ways the applicant can go and knowing the type of traffic he is going to create in and out does not feel there is an undue
295 nuisance or serious hazard to pedestrian or vehicle traffic. Mr. Mankus stated he disagreed. He believes the noise will be a
296 nuisance and it is a hazard pulling in and out of there in the trucks. 3-Yes 2-No

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298 Vice Chair Lee stated appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use of
299 the structure. The Board agreed.

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301 Mr. LaRochelle stated there is adequate area for the safe and sanitary sewage disposal and water supply. The Board agreed.

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303 Mr. Morgan stated the proposed use of the structure is not consistent with the spirit of the ordinance because the ordinance
304 requires a special exception and believes several of the criteria have not been met. Chair Rich disagreed and felt it was consistent
305 with the ordinance and the intent of the Master Plan based on the fact that the Town has small businesses that need to stay in
306 place. Even though it is in a residential zone it is on the corner of Route 28 and Miramichie Hill Road. 3-Yes 2-No

307

308 **Motion: To approve case #Z25-36, Changing Seasons Engineering, Stephanie Richard, Agent, and Richard Lundy owner**
309 **of Map 15 Lot 9-31 Miramichie Hill Road for a special exception from Article 400 Section 400.D.17 to permit a**
310 **Contractor's Yard.**

311 **Motion by Mr. LaRochelle, second by Vice Chair Lee. Motion passed 3-2.**

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APPLICATION

Case #Z25-32 Paul M. Monziona, Applicant	Map 9 Lot 33-2 NH Route 11/239 Henry Wilson Highway	Administrative Appeal Rural Residential (RR) Zone
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314 **An Administrative Appeal** is requested for Article 500 Section 520.E in reference to the Planning Board's
315 interpretation of the two-year deadline in the Alton Zoning Ordinance and predetermination of the application prior
316 to hearing on 6/17/25.

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318 **Case #Z25-32**

319 Chair Rich read the public notice into the record.

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321 Stephen Nix, Attorney for Paul Monziona, presented the Board with an outline of his presentation. He stated they are requesting
322 the Board to interpret or overturn the Planning Boards interpretation of the Zoning Ordinance, which would require this Board
323 interpret the Zoning Ordinance. The question presented is did the Planning Board err when it determined that the two-year time
324 limit for Special Exception is suspended during a court appeal? That language appears in both the Alton Zoning Ordinance at
325 Section 520 E and RSA 674:33:IVB. He provided the Board with a background based on facts that are derived from the
326 underlying appeal that has or permitting process and appeals that have been going on for the last few years. In 2018, Nicastro
327 and Goodrich, who were the underlying applicants in this approval and appeal, started a construction yard on their property
328 without Planning Board and Zoning Board permits. He referenced a letter from Nicastro and Goodrich indicating same. Three

years later on October 14th the applicants filed an application with a Special Exception with the ZBA for a contractor's yard. After several ZBA hearings, the Special Exception was granted on April 7th, 2022. The abutter, Mr. Monziona appealed the Special Exception to the Superior Court and the Supreme Court by order dated May 13th 2024, confirmed the ZBA's decision.

Two years from the April 7th, 2022, the ZBA decision was April 7th, 2024. Almost a year after the Supreme Court order on April 29th, 2025, the applicants filed an application for site plan approval with the Planning Board. He stated he has referenced the Planning Board approval and by laws. The minutes of the June 17, 2025 public hearing stated Mr. Buonopane noted that the Town counsel stated that since the ZBA application was caught up in litigation, the special exception would expire on May 13, 2026 which would be after the time period that they filed for the ZBA. The Planning Board approved the site plan on June 17, 2025.

Mr. Monziona takes the position that the ZBA application expired on April 7, 2022, which was prior to the Planning Board application. I have listed the applicable laws. RSA 674:33: IVB is a Special Exception. The Special Exception is valid for a period of two years from final approval unless the Zoning Board for good cause provides an extension or unless there is an application before the Planning Board. Neither one of the continuances occurred in this particular case. The applicant did not come back to the ZBA and ask for a continuance of the approval, and they did not file with the Planning Board within the two years. RSA 677:9 with the adding restraining order which states the filing of an appeal shall not stay in any enforcement proceedings upon the decision appealed from, and shall not have the effect of suspending the decision of the Zoning Board of Adjustment or local legislative body. However, the court, on application and notice, for good cause shown, may grant a restraining order. Under Zoning, the municipality has the power that the State grants it. And what the Municipality must do is exercise that power in conformance with the legislation. RSA 21:2 common usage. It states that words and phrases shall be construed according to the common and approved usage of the language. But technical words and phrases and such others as they may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and inappropriate meaning. He cited Section 520 E of the Zoning Ordinance that says that a Special Exception is valid for two years.

The rules of statutory construction govern the interpretation of the Zoning Ordinance (Lincoln vs. Chinard). Regarding statutory interpretation, in matters of interpretation the ZBA and the courts are the final arbiter of the legislatures intent as expressed in the words of the statute considered as a whole. The ZBA is the first stop as far as the interpretation of the Zoning Ordinance. In general Insulation vs. Act the Supreme Court applies the rule of grammar where clause A is separated from clause B by a comma and then the word and. Clause A and clause B are read separately.

Other rules that need to be looked at. Under RSA 677:79, restraining order, the term restraining order is a statutory subdivision heading and in the State vs. Legary as cited, the New Hampshire Supreme Court defined headings in part as a brief title or caption of the section of the Statute. The court went on to say that the section heading should briefly and specifically disclose the content of the section.

In the treatise reading law the interpretation of legal texts he cited the case of the Brotherhood of the Railroad Transman vs. Baltimore. United States Supreme Court Justice Anthony Scalia cited the heading is but a shorthand reference to the general subject matter involved. Headings and Titles are not meant to take the place of the detailed provisions in the text. The Town of Alton adopted the provisions of 677:33, adopting the two-year time limit as well as adopting the ability to extend the time limit. (Britain vs. Chester) Alton must follow the provisions of the state Statute. Alton must apply the provisions of 677:9 regarding appeals to the Superior Court. The Planning Board argues based on their attorney's opinion that the two-year rule is suspended during a court appeal and that not until the end of all court appeals did the two years continue to run. Mr. Monziona disagrees. In this case, the Notice of Decision specifically stated that the provisions of 674:33 apply. It is part of the underlying decision. The general rules of grammar apply in this particular case.

He referred to his presentation sheets and explained to the Board the rule of grammar, however he stepped away from the microphone. This interpretation is in the Zoning handbook. It says, "If a decision is appealed to the Superior Court, this action does not prevent the applicant from utilizing the approval unless the person appealing obtains an order from the court restraining or preventing the applicant from using the approval." An applicant who proceeds to use the approval when an appeal has been filed is doing so at his own risk because the appeal may ultimately be granted and the decision reversed requiring the applicant to undo anything under the approval.

He proceeded to go over the history of the language of the Zoning Ordinance. He went on to explain restraining order to the Board, but, once again stepped away from the microphone. The word restraining order is a subdivision heading in the Statute. But the rule is that it is simply a heading and that heading cannot trump what is underneath it. He once again stepped away from the microphone. A restraining order under New Hampshire Civil Practices states that a restraining order will be granted only to preserve the status quo against the threat of immediate and irremediable harm.

In conclusion, using the rule of grammar to RSA 677:9 supports that the appeal of the Zoning Board to the courts does not

suspend the 2-year time limit. And a party may petition the court for a restraining order or to the ZBA for an extension. In this particular case neither one of those happened. Mr. Monziona respectfully requests the ZBA overturn the decision of the Planning Board and find that the Special Exception terminated automatically after two years. Mr. Monziona added that the handout Mr. Nix presented is extremely thorough. His position is that he looked at the State Statute and feels the Special Exception had expired.

Mr. Morgan asked that assuming Mr. Monziona is correct, is it expired with prejudice? Mr. Nix stated he did not have an answer for that, but he would say under *Fischer v* to come back with the exact same application, something would have to change and that would be up to the applicant to argue what has changed. But he is not going to take a position on that either way until he sees what happens.

Chair Rich stated, isn't it a fact that with the Planning Board there was no legal interpretation from the attorney? They were guided by the attorney for the Planning Board at the time that the two-year limitation was not until May of 2026, but there was no legal explanation. Mr. Nix stated they do not know what was behind the decision. There is nothing in the Planning Board record to indicate what supported that decision.

Chris Boldt, attorney for John Goodrich and Lisa Nicastro spoke next. The issue before the Board was the last couple of words of Mr. Monziona, plain language of the Statute. He felt the Board was misdirected because that is not the right Statute. The right Statute is the one in 674:33 IVB cited in Attorney Nix's page 2. This is a newish provision 2013. It was created by the legislature to get rid of what was called zombie variances, zombie special exceptions, things that were approved many years ago but not acted upon and the neighborhood changed around them.

He would argue first and foremost the Planning Board did no interpretation of the zoning Ordinance. It applied a State Statute. Your Ordinance happens to recite the Statute, but it is not a provision of your Zoning Ordinance. Your Zoning Ordinance would still be valid without that provision, and the Statute would still be effective without that provision being in the Zoning Ordinance. He argued you do not even have jurisdiction to have to worry about this. He read the Statute. "Special Exceptions authorized under this paragraph shall be valid if exercised." That means they have to use it. It can unequivocally be stated his clients have been using their property as a contractor's yard. It has to be exercised within two years of final approval. Final approval is all the court cases are through or if further extended by local ordinance or by the Zoning Ordinance for good cause. He stated his clients did not have to come back to the ZBA. "Provided that no such Special Exception shall expire within six months after the resolution of a Planning Board matter." His clients could not submit an application to the Planning Board while the case was still pending because the Planning Board would not have accepted it.

The rules of grammar are irrelevant because it is the wrong Statute. The one presented by him is the right Statute. He told the Board to look at 677:2, which is when a Motion for Rehearing is required. That states within 30 days from any order or decision of the ZBA. That is your April 24th of 2022 date. That is a decision, not a final decision. He pointed out that the two Statutes do not use that same word. He explained that the ZBA decision is not final if an appeal for rehearing is filed within 30 days. He referenced a Planner letter to the Planning Board.

He also mentioned that the Statute for fee shifting had also changed. House Bill 1661 about 2 years ago, created various changes in the provisions applicable to the ZBAs and Planning Boards, but it expressly created 677:20, a fee shift that if someone brings an appeal that is found to be in bad faith, the recipient, the applicant can seek attorney's fees from that party. If an appeal is brought by an applicant, those fees can be applicable to the town.

Vice Chair Lee asked a hypothetical question in regard to the zombie comment. A case is brought forward, they get an approval for a Special Exception, an abutter is in disagreement, and they can bring up assorted lawsuits to appeal that decision. Hence putting an applicant in a zombie mode and they can't function because the legal process is delay, delay, delay, which is a tactic that is used in some cases, not saying in this case. So, the applicant may not know the law, could one just stay and twiddle their thumbs and wait for the courts to work through it? But by law, they have every right to continue to exercise what the Zoning Board approved. Is that accurate? Mr. Boldt answered to a degree. He clarified or corrected a couple of things. First, the zombie reference is for those things that were granted prior to 2013. It has a two-year life span starting going forward. He stated his argument is that the applicant does not lose his rights because somebody runs the clock. That Statute 674:33IVB says final decision and the courts say we cannot ignore words. So, the final decision in this case came in May when the Supreme Court gave us the order, May of 2024, that is when the two-year clock started.

Chair Rich stated Mr. Boldt is maintaining that the final decision was in May of 2024, not the final decision of the ZBA. Mr. Boldt explained the ZBA decision became final when the Supreme Court upheld it.

Chair Rich asked how the Statute presented by Mr. Nix could not be relevant. Mr. Boldt explained that it was brought out originally as an enforcement. It is the Town that filed a cease & desist against an applicant. The applicant comes to the ZBA and loses. The Statute means the Town can go forward and enforce even if he brings a suit unless he asks the court for an injunction.

He has to get the injunction. Mr. Goodrich and Ms. Nicastro got the Special Exception. Mr. Monziona sued. His clients could not go to the Planning Board until that case was over. His client was going to originally use one surveyor, who decided he didn't want to do it. They had to find another surveyor. So that was the delay of about a year to get that.

Chair Rich asked why they could not have gone to the Planning Board? Mr. Boldt said the Planning Board would not take it when it's a case up in appeal. They did not have a final Special Exception yet. Mr. Rich stated the ZBA approved it. Mr. Boldt explained it was appealed so it's not final. Mr. Rich asked why didn't the Supreme Court extend the time frame? Mr. Boldt stated that it is not their job. The Supreme Court just rules on the issue before it.

Mr. Boldt stated that the Statute says, "shall be valid if exercised within two years." His clients business predated the Town's request for Special Exceptions for contractor yards. They are operating their business. His argument is A) They have exercised so the two years is not applicable. B) they have complied with the terms of the Special Exception, and they have applied to the Planning Board, which was one of the conditions to the Special Exception, and were approved. The final clause in the Statute is "no such Special Exception shall expire within six months after the resolution of Planning Board application filed in reliance on the Special Exception. The resolution happened a couple of months ago. They have filed and shown their compliance with the conditions. They applied in April of this year and got approval in July. They have complied with the Zoning Board's provisions, and they have complied with the Planning Board's provisions.

Chair Rich stated there is no public input.

Ms. Kalfas stated she has lived in Town since the 1960's. About 45 years ago she did administrative review hearings. One of her decisions was appealed to Federal District Court. The judge stated in that case that he had to make a decision on what he felt was right and she advised the Board to do what is right.

Rebuttal:

Mr. Nix stated that one of the questions that was raised was whether or not a Special Exception was needed. It's an undisputed fact in the record that this contractor's yard existed in 2018. In 2018, it was not an allowed use in the zone. Only after the Zoning amendment was adopted and created the Special Exception was this use allowed by Special Exception. The argument that the pre-existing use somehow vested the rights does not hold because it was an unlawful pre-existing use and an unlawful pre-existing use cannot create a vested right.

As to final jurisdiction, it is clear that the ZBA has jurisdiction. The Board adopted RSA 674:33 in its Zoning Ordinance as well as the provisions in the overall Planning and Zoning Statute which gives the Zoning Board the ability to apply those Statutes to applications.

As to final approval, the question is was the ZBA's approval of the Special Exception in 2022 a final approval. He agrees with the attorney it was a final approval and that is when the clock started running. Mr. Nix left his seat and was not close to the microphone.

In regard to fee shifting, he took that as somewhat of a veiled threat regarding my client's ability to bring this application.

As to the Planning Board accepting the application or not, if they didn't that is fine. There are two other ways that the applicant could have solved the problem. 1) file the application, have a copy of the application from the Alton Zoning Board of Adjustment request an extension of the approval. 2) The zombie appeal he believes is a look over here defense. He stated that one of the most important responses is that this use was not allowed in the zone before the amendment to the Zoning Ordinance. Mr. Boldt stated he did not say that the ZBA decision in 2022 was a final decision.

Mr. Nix referred to page 6 of his report, footnote 3, Supreme Court rule 7-A an appeal to the Supreme Court does not stay an order of the lower court unless a motion to stay was filed and denied in the lower court. Attorney Boldt's argument that the appeal to the Supreme Court automatically stayed this is not valid under the rules of the Supreme Court.

Chair Rich stated he did not hear Attorney Boldt say that the final decision was on 2022. He heard him say, the final decision was in May of 2024 when the Supreme Court made it's decision.

Mr. Nix stated he stands corrected.

Chair Rich announced the Board was going to take a break to meet with Town counsel. The Board went into a Non-Public Hearing.

The Board returned to the room.

Chair Rich stated the Board had made a decision based on new information and the arguments from both sides. They have

512 decided that the Board will continue their deliberations and obtain additional legal review. They are going to continue the
513 Appeal to November 6th, so they have time to review with our legal counsel this new information that was presented by both
514 sides and new arguments.

515
516 ***New Business:***

517 The Board will address the application for the extension decision dated 11/2/2023 to amend approval for case #Z23-18, Gary
518 Nadeau, New Hampshire Route 11.

519
520 ***Motion: To approve an extension. We grant an extension of one year in the Special Exception dated 11/2/2023 in case***
521 ***#Z23-18.***

522 ***Motion by Mr. Morgan, second by Mr. LaRochelle. Vote was unanimous.***
523

524 ***Amended Motion: To add the Board will be willing to grant another one-year exception should that become necessary.***
525 ***Amended motion made by Mr. Morgan, second by Mr. LaRochelle, Vote was unanimous.***
526

527 ***Minutes:***

528 Approval of minutes for September 4th.

529 Ms. Ditri stated she had a proposal for the Board. They have not done a final approval of the August minutes because they have
530 a new minute taker, and they were 18 pages. And the September minutes are lengthy as well. She stated that Robin, Jessie, and
531 her will be meeting with the minute taker to clarify some of the formatting issues. She is asking the Board to hold off on
532 approvals until she can meet with the minute taker.

533 ***Motion: To postpone approval of September 4, 2025 minutes until November meeting.***

534 ***Motion by Mr. Morgan, second by Mr. La Rochelle. Vote was unanimous.***
535

536 Chair Rich asked if there was any correspondence. Ms. Ditri stated there was not.
537

538 ***Motion: To adjourn the meeting.***

539 ***Motion made by Mr. Lee, second by Mr. Morgan. Vote was unanimous.***

540 The meeting was adjourned at 10:35 P.M.
541

542 Respectfully Submitted
543 Laura Zuzgo