
Members Present: Timothy Morgan (new member), Lyndon Avery, Chairman Marcella Perry; Angela Bystrack (new member), Keith Chamberlain; Timothy Kinnon, Alternate.
Others Present: Planner, Kathy Menici; Secretary, Nancy Pritchard.

K. Menici read the following case:

**Case #Z05-36 Map 21, Lot 5-6
Robert and Sandra Bahre**

**Motion for Rehearing
Hopewell Road**

Application was submitted by Alton Board of Selectmen for a Rehearing on Case #Z05-23 regarding the September 1, 2005, ZBA decision granting the property owners request for an Administrative Appeal to overturn the decision of the Building Inspector and allow the issuance of a building permit in order to construct a building to store the property owners' antique and collectible automobile collection; and for a Rehearing on Case #Z05-24 regarding the September 1, 2005, ZBA decision granting a variance to allow the property owners to construct a building with an average roofline of 45.5' in height where Article 200, Section 228B, Height Restrictions, of the Alton Zoning Ordinance allows a maximum height of 35'. The property is located on Hopewell Road in the Lakeshore Residential Zone, the town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

M. Perry: The motion in this case is for the board to deliberate on. There will be no input on this.

M. Perry: The motion to reconsider. Now comes the Alton Board of Selectmen wherein referred to as the Board and pursuant to RSA677:2 moves for reconsideration of the Zoning Board of Adjustments hereinafter referred to as ZBA August 31, 2005, action in the above captioned matters in support thereof states as follows. Are there any comments?

K. Chamberlain: I noticed in both of the attorney's briefs the appeal of the administrative decision that was filed by Attorney Sessler claims the date was August 31, 2005, and then the Alton Zoning Board of Adjustment made their decision.

M. Perry: This is the Board of Selectmen, not Attorney Sessler.

K. Chamberlain: Excuse me, the Board of Selectmen, I stand corrected. That was drafted by Attorney Sessler and I don't know about the legality of it all, but our Board actually convened and heard this case on September 1, 2005, not August 31, 2005. That is a point of interest and probably a point of law that would be interesting if we had legal representation that we could get an answer to that. I don't know if that would throw the case out on its ear or whether it is just an error that would be considered a minor error in this case. That is the first thing I wanted to point out. Obviously we all know as members of the Board of Adjustment the rules of a rehearing. If anybody doesn't know, they have their zoning book for the State of New Hampshire and on pages 43, 44 and 45, they have the purpose for the rehearing, and basically in

essence what we are looking for is mistakes of fact and new information that hadn't been heard at the first hearing, and a motion for a rehearing should be set forth fully for every grounds upon which it is claimed that the decision or order of his complaint is unlawful and reasonable. We have convened this hearing within the 30 day time limit which is by law what we have to do. A rehearing is based on the Code Officer's administrative decision and I will quote it at this time your building permit application, and this is what the Alton ZBA was hearing: "At this time your building permit application has been denied for your garage in the Lakeshore Residential Zone. Only residential garages are allowed, such as two car garage structures." That was the order that the Alton ZBA was hearing on appeal. It seemed to me that in the Board of Selectmen's motion to reconsider quite a great deal of onus was placed on recreational use is not for profit, and I would like to state for the record in my personal opinion that the ZBA did look at what the appeal was based on which was the code officer's denial. I would also like to point out that the board's motion was to overturn the building inspector's denial of the building permit. As I compared both of these motions to reconsider, an objection to reconsider if you want to go through each of these individually we could, but I didn't find any evidence from the Board of Selectmen that would make me think that this hearing should be heard again.

M. Perry: Are you through, Keith?

K. Chamberlain: No, I am not. After careful review, I do not feel that the moving party has been persuasive, that the Board has made a mistake, and also that new facts were brought up, but in light of the careful review that I have made, I would like to make some recommendations to the board. In light of the fact that Attorney Sessler, who is our town's attorney that represents the Alton Zoning Board of Adjustment, with him taking the sides of the Selectmen, that leaves the ZBA without legal representation.

M. Perry: That is not true, Keith. He still represents the town.

K. Chamberlain: At this point Madam Chairman, he doesn't represent the Alton Zoning Board of Adjustment. He has taken a side. I asked him that the other night when we had a hearing here for conflict of interest. He basically stated that he was on the Selectmen's side and that the Town Administrator was on the Selectmen's side and the Town Planner was on the Selectmen's side.

M. Perry: He isn't the attorney representing us in this case. Correct?

K. Menici: No, he would not.

M. Perry: In this particular case. Yes, we have an attorney.

K. Chamberlain: Who is that attorney?

K. Menici: Bernie Waugh

K. Chamberlain. Okay, let me continue then.

A) If it is at all possible due to the lack of legal representation to the Alton Zoning Board of Adjustment that we could continue this rehearing to the next regularly scheduled ZBA meeting in order for independent legal counsel being afforded the ZBA regarding this case.

B) That automatically approve a rehearing tonight would be premature and a potential injustice to the applicant who would have to defend his interest of position a second time.

C) We have the choice to make a motion to deny the rehearing, and I will stop right there and wait for other input from fellow members.

L. Avery: When we made our original decision, we spoke of interpreting the ordinance, and no where in the ordinance did it say anything about the size of a garage which could be built. I noticed also in the paperwork from the motion, they talk about the height of the building and not being in the spirit of the ordinance. This particular building is being built in the very same likeness as the applicant's primary home, and no abutter had any problem with it when you consider public interest. The building itself is on its own separate lot, not even on the same lot, and with concerns to the living quarters they intend to put in it. In my opinion, and as I felt at the original meeting, I saw no problem with granting the request.

T. Kinnon: I would like to separate the cases. The first one, the motion to reconsider, speaks specifically to the definition of recreational use. I do feel that Mr. Chamberlain brought it up at the original hearing that this is actually a residence with a garage. The applicant has stated it in reverse, a garage with a residence, but it is what it is, it is a residence with a garage, and no where in the Zoning Ordinances does it prohibit the size of a garage. Albeit it is very large, a 70 car garage, there is no wording to prohibit that, so I feel that the motion to reconsider in the first case does not have any new evidence or any evidence that is relevant to the original decision made by this board. The second case with regard to the height restriction, I do feel that there is room for further discussion on that. When we get into this area of hardship concerning the special conditions of land and the uniqueness of it, it is very difficult I feel to put a hardship on a condition when the condition is being made by the applicant. The applicant wants to build a structure that at some points does go up to 56 ft. The applicant has created the hardship which I don't feel is a good prong for us to use in granting a variance, so I do feel there is room for further discussion on the second case.

M. Perry: I haven't changed my opinion from the first hearing. I had very strong reservations on the recreational use and non-profit, and there being no definition to support that. I think we are opening up Pandora's Box by just assuming that means an individual's recreational use. I think this is far more reaching than just what we had considered. I think we were looking at a very narrow scope and I think we should consider seeking legal, and that is what I initially said from the first time that I should have sought some legal help in determining what that means, in the scope of what that meant. I don't think we really researched that enough when we made that decision. The second case on the height, I feel that because they had taken precautions to take care of the safety aspect of it, for me it wasn't a problem, but I definitely think that the first case is a problem.

T. Morgan: I did not hear the testimony so I form my opinion solely from reading the record, but I agree with the chairman that we probably haven't properly considered the definition, the meaning, and the intent of the definition, and I am also concerned about meeting some of the tests under the case decided at the end of the first brief, and for that reason I suggest that we consult with counsel to get some advice on both of those issues.

K. Chamberlain: I would like to just add this: "From the Alton NH Zoning Board of Adjustment Bi-Laws, amended on 10/3/02, specifically to Section 10.1 appeal from Administrative decision. This is not the complete sentence, but the meat of the matter is "A copy of the code official's written decision must be submitted along with the application." Basically, what the Building Inspector issued is clearly shown as Exhibit A and the Objection to Motion to Consider, and I will read it again to you. This is what we were hearing the case on, not recreational uses not for profit. If that is what the case was that we would be hearing for the ZBA, it should have been on this document. This document says "Regards building permit for garage application. Dear Mr. Bahre, At this time your building permit application has been denied for your garage in the Lakeshore Residential Zone. Only residential garages are allowed, such as two car garage structures. If you are grieved by this decision, please feel free to appeal to the Zoning Board of Adjustment." No where does it say anywhere from the building inspector that we were determining whether it was an allowed use to build this structure in the Lakeshore Residential Zone under recreational use is not for profit.

M. Perry: This was an argument that was brought up by the client and his attorneys at that hearing and it is in the minutes that this was the justification for the size of the building in their argument to us. If you look at the minutes it is in there.

K. Chamberlain: I personally feel if we were to discuss the case on the merits, and it said specifically from the building inspector that we were hearing the case on recreational use is not for profit, that was what we should have had to deal with. So, consequently, as I look at the motion to reconsider by the selectmen, and look at the denial or the objection of motion to reconsider, I feel ..

M. Perry: If think that only strengthens the motion to reconsider. I think that strengthens the motion to take this under advisement with our attorneys and then to reconsider the case.

K. Chamberlain: I also have made a point that I don't think it would be fair to go for a rehearing on this and make both parties to this objection redo the case. My suggestion is that we continue the motion for the rehearing until the next regularly scheduled meeting, so that we can meet with Attorney Bernie Waugh to answer some relevant questions. That I think is within the power of the board. The people have actually applied within the 30 day time limit, so they have met the statues of the ZBA. I don't feel because Attorney Sessler has written this motion to reconsider for the Selectmen, I don't feel I have had adequate chance to speak to legal representation. It has taken a while for this to happen; it took a long time for this case to be heard; we were given very short notice about this case as Mr. Kinnon will testify to. It came up at our last hearing on October 6 why we had not heard about this rehearing sooner. I think it would be wise to continue

this so that we, the Alton ZBA, can seek legal representation and answer some of the questions that we have.

M. Perry: Are you making a motion to do that?

K. Chamberlain: No, not yet, because I think we are still in full discussion.

A. Bystrack: I would like to definitely continue this case to be reheard. I don't think I have had adequate amount of time with dealing with the uniqueness of it to adequately make a decision, concerning the facts considering there is so much gray area in unknown. I would rather wait until we were able to gather up more evidence and definitions.

K. Chamberlain made a motion that we continue Case Z05-36 for Robert and Sandra Bahre, a motion for rehearing for both cases until November 3 at 6 p.m. at the Alton Town Hall in order for the Alton ZBA to be afforded the opportunity to seek legal counsel and representation in this matter. Following adjournment of this meeting, the ZBA would go into the regular board meeting at 7 p.m. Motion was seconded by Tim Morgan. The motion was carried with all in favor.

K. Menici: Madam Chair, do I understand that the board wants to meet with legal counsel prior to that meeting?

M. Perry: Yes

K. Menici: I have a choice of two dates prior to November 3. He would be available on October 24 or October 31, both of which are Monday evenings.

K. Chamberlain: How many opportunities will we have to meet with this attorney? Is he going to be at our beckon call if the members have any questions?

K. Menici: All questions would be referred through the chair person.

The ZBA will also meet with legal counsel with Bernie Waugh on October 24 at 6:30 p.m. at the Town Hall. Kathy will confirm this meeting time with counsel.

Adjourn: Motion made by K. Chamberlain to adjourn at 6:30 p.m. Motion was passed with all in favor.

Respectfully submitted,

Nancy Pritchard
Secretary Pro-Tem