

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
Thursday, November 4, 2021, at 6:00 PM
Alton Town Hall**

MEMBERS PRESENT

Thomas Lee, Chairman
Paul Monziona, Vice Chair
Frank Rich, member/clerk
Paul LaRochelle, Selectman's Representative
Tim Morgan, member – excused absence
Mike Hepworth, alternate member

OTHERS PRESENT

John Dever, III, Code Enforcement Officer
Janet Sienko, applicant
John Goodrich, applicant
Lisa Nicastro, applicant
Bob Barnette, abutter
Maurine Calvin, abutter
Bruce Conrad, abutter
Douglas Brown, resident
Mathew Bowens, resident
Drew Carter, resident
Mike Currier, resident
Jackie Anderson, resident
Chris Pomeranz, resident

CALL TO ORDER

Chair Lee called the meeting to order at 6:04PM.

INTRODUCTION OF BOARD MEMBERS

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

APPOINTMENT OF ALTERNATES

Mr. Rich made a motion to have Mr. Hepworth sit on the Board as a full member. Mr. LaRochelle seconded the motion. Motion passed, 4-0-0.

STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds that the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal,

but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a Variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a Special Exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance have been or will be met.

APPROVAL OF AGENDA

The Board reviewed the agenda. No changes were made.

Mr. Monziona made a motion to approve the agenda as presented. Mr. Rich seconded the motion. Motion passed, 4-0-0.

NEW APPLICATIONS

Case #Z21-28 Janet Sienko & Bruce Mazzochi, Owners	Map 43 Lot 39 339 Trask Side Road	Variance Lakeshore Residential (LR) Zone
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A **Variance to Article 300, Section 327. A. 1.** of the Zoning Ordinance is requested to permit construction of a second level deck, over an existing deck, that will encroach into the 30' Shorefront setback.

Chair Lee read the public notice into the record. The Board reviewed the application for completeness. Mr. Rich noted he didn't see a list of costs. Mr. Dever confirmed it was submitted.

Mr. LaRochelle made a motion to accept the application as complete. Mr. Rich seconded the motion. Motion passed, 5-0-0.

Janet Sienko, applicant, stated they want to convert an existing deck, which is within the shoreline setback, to a three-season porch, then use the space above the porch to make it more aesthetically appealing with an open-air deck. She stated the existing Juliet balcony is unusable; she stated where the deck is located, the builder suggested this to make the appearance more appealing. She confirmed a New Hampshire Department of Environmental Services Shoreline Permit was received. Mr. Monziona asked how far the current deck encroaches in the setback. Ms. Sienko stated she measured it at 6.5 to 7' as the start of the deck from the reference line/where the water edge is. Mr. Monziona noted the existing structure, which is grandfathered is about 23' into the setback. He confirmed the second story balcony would be brought over the existing deck; the existing deck will be screened in. Ms. Sienko stated the builder's suggestion was to remove the Juliet deck and utilize the roof of the three-season porch as an open-air deck. It was confirmed the second-floor deck would not come out as far as the current lower deck. The deck on the second floor will not have a roof but may have an awning attached to the exterior wall of the home. Ms. Sienko stated they will use the existing support posts and add two more; there is a lot of ledge in the area. She stated because of location, they want to join the decks. Mr. Rich confirmed the shoreline permit has been received. Mr. LaRochelle noted the previous owner obtained approval from the ZBA in 2010 to add a second story to the building with conditions added which include the bedroom count shall remain at two; the kitchen on the main level will be removed and the kitchen on the second level will remain. Ms. Sienko confirmed that

is correct. Mr. Monzione asked if the same plans were submitted for the shoreline permit. Ms. Sienko confirmed the plans were the same.

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

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

Chair Lee closed public input.

Discussion – Case #Z21-28

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

Mr. Hepworth stated granting the variance **would not** be contrary to the public interest. The Board agreed.

Mr. LaRochelle stated the request **is** in harmony with the spirit of the ordinance and the intent of the Master Plan to maintain the health, safety and character of the direct district within which it is proposed. Mr. Monzione stated this is a grandfathered structure; the deck will not violate any requirements of the ordinance because of this. The Board agreed.

Mr. Rich stated that by granting the variance, substantial justice **will be** done. He stated there is no significant change other than the second story deck over a deck which is existing. The Board agreed.

Chair Lee stated the values of surrounding properties **will not be** diminished. He stated this will make the structure aesthetically pleasing; there has been no evidence presented that would indicate values would be diminished. The Board agreed.

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

- i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;*
- ii. *The proposed use is a reasonable one.*

Mr. Monzione stated the building is grandfathered; the plans are not making the property more nonconforming; the use remains residential and is reasonable. Mr. LaRochelle stated he disagrees there is a hardship to no add on a second-floor deck; he doesn't see how it impacts the property and livability of the property. Ms. Sienko explained the kitchen is on the second floor and to access it they have to go thru the entire house to get to the deck. She explained the current second level deck is too small to be usable. Mr. Rich agreed with Mr. LaRochelle; he stated living in this particular area the winds can be strong and he understands wanting to improve the design. Mr. Monzione stated if they look at the general public purpose of the ordinance, it is to keep structures out of the lake and the setback; if it was applied strictly, they still wouldn't achieve that because there is an existing deck; the proposal is to add a second level over the existing deck which is already in the setback.

Mr. Rich made a motion to grant the request for a Variance for Case #Z21-28 with the understanding the Shoreline Permit will be submitted to the Board. Mr. Monziona seconded the motion. Motion passed, 5-0-0.

Case #Z21-29 John Goodrich, Lisa Nicastro, Owners	Map 9 Lot 33-2 239 Henry Wilson Hwy.	Special Exception Residential Rural (RR) Zone
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A **Special Exception** is requested from **Article 400, Section 401 D. 17.** of the Zoning Ordinance to permit a Contractor's Yard as defined in the Zoning Ordinance.

Mr. Monziona stated he would be recusing himself from this case.

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

Mr. LaRochelle made a motion to accept the application as complete. Mr. Rich seconded the motion. Motion passed, 4-0-0.

Lisa Nicastro, applicant, stated they currently operate an excavation business at this property; she stated there is a parking area and they live on the property. She explained the special exception is to be able to park equipment and operate as a contractor at the location. It was confirmed the only access to the property is from Route 11. Mr. Goodrich stated they have been operating since 2018 but owned the property for 11 years. Chair Lee noted the request for a special exception is for parking equipment on the property; previously the equipment was parked elsewhere. Ms. Nicastro stated the hours of operation are about 7:00AM to 5:00PM, Monday thru Friday. Mr. Goodrich stated they do work around the property during the weekends. Occasionally materials are brought in when leftover from a job. Mr. Goodrich stated most of the time materials do not go in and out; there are small piles of aggregate which have come from the property. He confirmed no maintenance of vehicles or equipment is done on the property. It was confirmed there are no sales of vehicles or equipment. Ms. Nicastro stated there is no public on the property and no advertising; it is not a working material pit. Mr. Rich confirmed the business has been gradually growing since 2018; he asked if someone complained about the business and why they are coming for a special exception. Ms. Nicastro stated there was a complaint and they were approached by Mr. Dever. It was confirmed they didn't receive any complaints themselves. Mr. Goodrich stated the parking area was chosen to be furthest away from abutting properties. Pictures and plans were presented depicting the proposed parking area. Ms. Nicastro stated from the front of the parked dump trucks to the back of the property line is almost 200'. Mr. Goodrich stated the distance from the closest abutting property line to the grassy area depicted in the photographs, is about 250' with an uphill grade. He stated there are tree buffers along the other property lines. It was confirmed the lot to the right is about 2.5 acres on New Durham Road. Mr. Goodrich explained their driveway is the only one on the left-hand side of Route 11 in Alton. He stated the site distance is about 6/10 of a mile in each direction; there are breakdown lanes in the area. There is another house on the opposite side of Route 11 with access to Route 11, about 100' away. Mr. Goodrich confirmed letters of support and agreement were received from numerous abutters. Chair Lee confirmed the business does not store and sell aggregate; he stated the

parking areas need to be detailed in a contractor's yard and that has been clearly depicted; there will be no maintenance on the property so no need of disposal; there will be tree buffers between the parking areas and public streets and adjacent properties. There are trees all around the property along with slopes. Ms. Nicaastro stated there is also a 14-15' embankment with trees along the Route 11 side of the property. Mr. Goodrich stated a lot of trees have been left out of respect of abutters. He stated the driveway will be paved; the parking area is flat with ledge pack which will reduce dust. Mr. Rich confirmed they are not looking to do maintenance of equipment, or retail or wholesale of landscape and contractor materials. He stated if they decide to do that in the future, they will need to come back for a special exception to expand beyond the existing approvals. Mr. Dever noted this will also go before the Planning Board for a Site Plan approval.

Chair Lee opened the hearing to input from the public in favor of the application. He noted four letters were received from abutters indicating there are no objections. Chair Lee read the letter from David Hayes, abutter, into the record. Mr. Hayes has concerns about a commercial business abutting his property; he stated if the Town's boards feel the special exception would affect his property value, he would be opposed in that case but trusts the Town boards involved.

Bob Barnette, abutter, stated he has heard tail gates hitting the back of the truck perhaps once or twice a week but gets a lot more traffic noise and he doesn't have a problem with the proposal.

Maurine Calvin, abutter, stated she has done business with Mr. Goodrich for more than a decade; she stated she had to pickup something at their property and had a hard time finding the driveway so it is hidden, not an eyesore to the public and the purpose of the ordinances are to keep it residential; when the business can't be seen from the street she doesn't believe it is overriding the intent of the ordinance. She stated it can be seen from Route 11 or New Durham Road.

Bruce Conrad, abutter, stated he has known Mr. Goodrich for a while and done business on occasion; he stated he found them to be thoughtful and conscientious and believes all criteria is met for the special exception to be granted.

Douglas Brown, resident, stated he believes everything has been consistently represented with the operation Mr. Goodrich runs. He stated he believes all the criteria has been met and the criteria in regard to buffers is adequate and the proposal will have minimal impact on the neighborhood.

Mathew Bowens, resident on New Durham Road, stated he supports Mr. Goodrich; the site is clean and he isn't concerned about noise.

Drew Carter, resident, stated he is in favor of Mr. Goodrich's business; his job sites are neat and clean as is his business site.

Mike Currier, resident, stated he has known Mr. Goodrich for a long time; he stated Mr. Goodrich is a good guy and respects everyone.

Jackie Anderson, resident, stated Mr. Goodrich has done work for them in the past; they are upstanding people, hardworking and decent and would like to see the special exception granted.

Mr. Monziona stated it is difficult for him and he doesn't doubt anything that has been said about the character of the applicants; he stated he agrees that John and Lisa have a lot of integrity however he has heard a lot of loud noise from the property. He stated the property was his backyard of his house at one time. He explained he is the closest abutter with Mr. Hayes property being the second, and noted Mr. Hayes is a full-time resident of yet indicated he had heard noise from dump trucks and if this will affect property values, he can't support it. Mr. Monziona stated he has heard noise for years including running of diesel engines and backing of dump trucks. He stated this is clearly a commercial operation with dump trucks and heavy machinery; he explained the zoning is rural residential. He stated when they started doing this business, a contractor's yard was not permitted. Now it is allowed with special exception. Mr. Monziona stated if a commercial business is moved into a rural residential zone, it can be done as long as it can be shown there will be no adverse impact on the area. He stated a special exception is to get an applicant in with the ZBA to see if there will be an impact on others in the area. He stated Lisa came to him years ago and was apologetic for the noise and explained they were planning to put in parking down back; he stated it seems there is constant construction going on, so he went to Mr. Dever to inquire about what is going on on the property. He stated when the leaves are off the trees, he can see everything that is going on and it looks like an ongoing construction site. It is not just trucks being parked; there is frequent and loud activity going on. He stated it is unsightly and it doesn't belong in a rural residential zone. He stated as a landowner he has the right to quiet enjoyment of his property and that is being infringed upon by this activity, so he has no choice but to object. He stated he also has a right to protect his investment in his property; he distributed an opinion from a qualified real estate appraiser who concludes that if a property is abutting a commercial property such as this, it will be of less value than a property which does not abut a commercial property. Mr. Monziona stated this activity is not allowed in this zone and the applicants took a chance to put a business in this zone and explained certain criteria has to be met for the special exception. He outlined the criteria the Board must consider: he stated its not an appropriate activity, factual evidence is found that property values will be reduced and its not compatible with the zoning, there is valid objection from abutters, there is a right-of-way from New Durham Road to Route 11 which is a steep incline and that is where the driveway is located, it is not consistent with the intent of the ordinance and Master Plan, it interferes with the character of the rural zone. He stated he hears the noise all the time and it will negatively affect his property, Mr. Hayes and possibly others. It was confirmed Mr. Monziona's property is directly behind Mr. Goodrich.

Ms. Nicastro clarified she has never spoken to Mr. Monziona since purchasing the property. Mr. Monziona stated he thought it was her as it was someone who came and apologized for the noise and indicated they would be putting in a parking area. He assumed the noise he heard was from the construction project, but it has continued for years.

Chris Pomeranz, resident, stated Mr. Monziona is deflating the improvements being made to the property; he stated that does make some noise and doesn't have anything to do with the business operation. He stated the improvements can take a number of years; he stated the specific

concerns raised by Mr. Monzione could certainly be mitigated including the truck noise and back up alarms. It was noted commercial properties are often valued higher when uses are allowed by special exception. Mr. Rich stated all the property owners in this area, purchased their properties as being in the rural residential zone; he stated special exceptions have to meet certain criteria. He noted this construction has been going on for four years without a special exception. Mr. Goodrich stated since they purchased the property, they have done many improvements, filled in a lot of areas and the value has doubled. He stated he disagrees that Mr. Monzione can see his property six months out of the year.

Mr. Rich asked if the applicants spoke with the individuals and abutters who came in support of them; it was indicated they did however did not have a conversation with Mr. Monzione. Ms. Nicastro stated she suspected he was where the complaint came from. Mr. Rich suggested they have talked with Mr. Monzione as he was the abutter who was most affected and see what could be done to mitigate concerns. Mr. Goodrich stated Mr. Dever asked what was being done on the property and they stated they are parking trucks and equipment; Mr. Dever indicated at that time the property was not zoned for that use and it was mentioned that a complaint had been made. Mr. Goodrich stated they have a noise video to present as well. Chair Lee noted there seems to be a disconnect between the support indicated from residents and abutters and the concerns about noise raised by Mr. Monzione. He asked what times the noise is the most constant. Mr. Monzione stated there are times when its constant beeping from trucks backing; there are days when equipment is running all day, two or three times per week when that activity is going on. He stated he didn't say anything to Mr. Dever as a woman had come to him and indicated a parking lot was being put in so he assumed that was the cause of the ongoing construction but when it didn't stop he asked Mr. Dever. He stated he has heard noise that sounds like processing, screening and crushing of materials; it does not seem like just sounds from creating a parking area. Mr. Monzione clarified he doesn't have a problem with them creating a parking area for equipment. Mr. Goodrich noted most of the product piles came from materials on the property. Ms. Nicastro stated they did rent a screener last summer and screened loam from their property, noting this is something anyone can do. She noted they are within the noise ordinance and backup beeping is an exception because it is for safety purposes. Mr. Monzione stated that is for a commercial zone but not a rural residential zone where commercial activity is not expected. He stated property owners have the right to quiet and peaceful enjoyment of their property. Ms. Nicastro stated as a property owner, she has the right to update and improve her property, she said they are constantly doing things around the property.

Chair Lee stated it seems there are problems which can be worked through; he stated he isn't sure if this Board is the place for it and suggested it's unlikely in his opinion that this will go through tonight. He suggested if the applicants rescind the application, they have the opportunity to work through the concerns and possible mitigations with the abutters. Ms. Nicastro and Mr. Goodrich stated they would like to try to work through the concerns with abutters. Mr. Dever noted the action would not be a rescind but rather a continuance otherwise there will be the financial burden again of a new application. Chair Lee suggested the Board have a site walk to see what can be seen and heard. Mr. Monzione suggested if there is a site walk, the Board come onto his property to see and hear what affects his property. He agreed that if there is a mitigation of some kind for the noises, it could reduce the effect on property values and then the applicant

could meet all the other criteria. Chair Lee again encouraged the applicants to sit down and talk this over with Mr. Monzione to see if they can come to an agreement on the mitigations.

Mr. Goodrich showed a video which was recorded from near the property line with Mr. Monzione which depicted equipment operating. Mr. LaRochelle noted the piles of materials appear to be a working pit not just an ongoing project.

Ms. Nicastro stated they would like to continue the case.

Chair Lee stated the Board will work to schedule a site walk of the property as well as Mr. Monzione's. Mr. Dever explained the Site Walk is a public meeting but it is for the purpose of the Board to view the property and ask questions; it will be scheduled and posted as soon as possible. He stated he would not be the best person to be the mediator considering his position in this case.

Chair Lee stated they will continue Case Z2021-29 to the next meeting of December 2, 2021.

OTHER BUSINESS

1. Previous Business:

- a.** Master Plan Update – Mr. LaRochelle stated the committee is going over the rough draft and will meeting again on November 9 to decide what will be presented to the Planning Board on November 16. He stated they will be going over the aspects of the master plan and separating each member of the board to look into the various categories. They are hoping to have a warrant article put together for this year to help cover the \$9,000 cost for the plan update. No update at this time.
- b.** ZAC Update- Mr. Dever stated they decided against pursuing the short-term rental issue on a warrant article for this year; he stated the alternative housing committee will be looking into it further for the 2023 cycle. He stated something the Planning Board will be looking at is having non-resident property owners as committee members; this will bring a broader range of individuals with experience in short term rentals. The rest of the zoning amendments will also be presented to the Planning Board at the next Planning Board meeting.

2. New Business:

- 3.** Approval of Minutes: ZBA meeting minutes of October 7, 2021 – Edits were made. **Mr. Monzione made a motion to approve the minutes as amended. Chair Lee seconded the motion. Motion passed, 4-0-1.**

4. Correspondence: None.

ADJOURN

Mr. Rich made a motion to adjourn. Mr. Hepworth seconded the motion. Motion passed, 5-0-0.

The meeting was adjourned at 8:35PM

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary