

MINUTES APPROVED April 3, 2008

Call to Order by Chairman, Timothy Morgan at 6:55p.m.

Present: Timothy Morgan, Paul Monziona, Steve Hurst, Marcella Perry, Stacey Ames-Planning Assistant, and Sharon Penney-Town Planner

Appointment of Alternates: No one appointed at this time.

Statement of the Appeal Process

The Vice-Chairman read a brief statement of the Appeal process. The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds which the Board must consider when making a determination. The purpose of the hearing is not to 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 will be considered. In the case an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

Approval of Agenda: Motion made by M. Perry to approve the agenda as presented, seconded by S. Hurst. Motion passed with all in favor.

Case Z07-17

Map 52, Lot 31

**Variance
Route 11D**

Robert & Kathleen Bielawa

Application submitted by Melissa Guldbrandsen of Alton Law Office PLLC, on behalf of property owners Robert and Kathleen Bielawa to request a variance from the Town of Alton Zoning Ordinance 2007, Article 300, Section 327A Setback Requirements. This property is located within the Lakeshore Residential Zone. Continued from the November 1, 2007 meeting.

Motion made by P. Monziona to accept the application as presented on Case #Z07-17, seconded by M. Perry. Motion passed with all in favor.

Present for this case: Melissa Guldbrandsen, and Robert and Kathleen Bielawa.

M. Guldbrandsen – We left the last meeting with questions on Route 11-D and I had some follow-up discussion with the Town Planner and Town Counsel and we agreed to stipulate that the Right-of-Way width is 65' based on the engineered plans for the roadway. I would like to go through the criteria for an area variance that we are looking for tonight as opposed to a use variance. The first area to address is whether there is a hardship on the property. The dimensional variance would be needed to enable the land owners proposed use of the property based on special circumstances. The biggest circumstance in this case is the property is right next to Lake Winnepesaukee. The Bielawa's proposal is to take down the existing house and move it back from the so it meets the 30' setback from the lake and rebuild a house that is 28' wide. In pushing the house back from the lake it gets into the setback from the 65' Right-of-Way. The other special circumstance is that we know Route 11-D was an old railroad R.O.W, we also know that a portion of the applicant's property came from B&M Railroad. We are looking to encroach on a steep banking that is not buildable. The current house encroaches into the 30' setback from the lake. We are eliminating the non-conformity with proximity to the lake.

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To make the house meet the 30' setback from the lake and be subject to the 25' setback from the 65' R.O.W, you would end up with a house that was narrow. The applicant's have worked to tailor their home design to the existing lot knowing the current circumstances on the lot. The second is whether the request is the minimum variance needed to grant the reasonable relief to the owner. The next is whether the variance request is kept within the spirit of the ordinance. Looking at the pictures you have there are other houses even closer to the road. We are not encroaching into the actual easement area of the R.O.W.; we are just dealing with the setback from that. The road has been upgraded in the recent past and if you have been down Route 11-D there is no way to widen it anymore than it is. The Right-of-Way varies on that plan it is not a consistent 65'. The proposed building is also consistent with the neighborhood and would comply with the spirit and intent of the ordinance. The Bielawa's are also upgrading their septic system. The public interest is served by having these people move their house back from the lake and to meet that setback. The current house has three bedrooms and the proposed would have two bedrooms, and the septic design has been approved already. Increasing the setback from the lake is beneficial to everyone; here the variance would allow the applicant's to construct a building according to a reasonable design, which is also in harmony with other surrounding homes. There has been recent construction down the road from the applicant and the house is basically right on the roadway. In terms of substantial justice, we are here complying with the ordinance and we are asking for the relief that the Building Inspector asked of us. Granting this variance tonight would be a just thing for this board to do. I don't see there would be an impact on peoples surrounding property. The analysis of the value of the surrounding properties, I don't see how the applicant's proposal would decrease surrounding property value.

M. Perry – The existing building is that a 2-story 3 bedroom and you are proposing a 2-story building?

R. Bielawa – Yes but the proposed is with a basement and the existing doesn't have one.

M. Perry – Is the elevation going to be higher than existing?

R. Bielawa – It will be higher than the existing.

M. Perry – How much higher?

R. Bielawa – 6'-8' probably, it is still going to be below the road elevation.

M. Perry – Is there anyone across the street?

R. Bielawa – No we own that piece and there is no one on either side of us.

M. Perry – The shed on the print, is that in the ROW already?

R. Bielawa – That is going, being taken down.

T. Morgan – You said 17 ½' and in the memo to Jim Sessler it says 12 ½'.

M. Guldbrandsen – Sharon and I met to go over this and there is confusion as to that. We went around on the math and it is where do you start measuring, from the edge of the payment or the center line?

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S. Penney – Because the impact is on one side of the road we went from the ROW and we took the centerline measure out.

P. Monziona – I think for the record it should be noted that there is at least one plan out there that would support the agreement with Town Council for purposes of this application. How many feet into the setback will you ultimately be than using this 65'?

M. Guldbrandsen – The house is shown 30' back from the lake and 28' wide and the 25' setback which was depicted from the original 40'.

P. Monziona – Would it be correct that you are looking to go about 12 ½' into the setback, and that is what it means in the agreement where it says that the setback variance requested by the variance is 12 ½'.

M. Guldbrandsen – Yes

S. Hurst – Marcella and I feel that we should establish the measurements from the center line.

M. Perry – We do. The problem with the lake is because of elevations and so forth, we have had difficulty in the past setting the distance from the lake because of different elevations and we do have that.

R. Bielawa – We are having that surveyed next week so that we know the exact 30' mark from the lake and it could be that we could go a little further away from the road that we had proposed.

M. Guldbrandsen – That is how I structured it with Jim.

Public Interest

S. Hurst – Based on the information received I feel that the variance will not be contrary to the public interest. The home is being moved back away from the lake.

M. Perry – I agree it will not be contrary to the public interest because we do have that clarified as to what we are talking about and because of other visual homes in the area I feel it will not be contrary to public interest.

T. Morgan – I agree that it will not be contrary to the public interest.

P. Monziona – I agree and I think that because of that steep embankment and how far you are going to be from the edge of the road and where the house is going to be I don't think it is going to be contrary to public interest.

Spirit of the Ordinance:

M. Perry – The request is in harmony with the spirit of the zoning ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed, I think that it is in harmony with the spirit of the ordinance because you are trying to get as far away

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from the lake as possible and I think it is for safety and health with the septic and it is in character with the district from which it is going to be built.

T. Morgan – I agree that it is in harmony with the spirit of the zoning ordinance and I also agree that upgrading the septic and moving away from the lake is addressed as the health and safety and character of the area.

P. Monziona – I agree with all of that as well. I think getting away from the lake is better and you have enough land there with the embankment that you are not getting dangerously close to the road to pose any health or safety issues and I would say the request is in harmony.

S. Hurst – I agree also.

Substantial Justice:

T. Morgan – By granting the variance, substantial justice will be done, I think this is appropriate in view of the other homes in the area which are already out of variance from the setback and I think it is only just that this applicant be permitted to do the same thing.

P. Monziona – I agree

S. Hurst – I agree

M. Perry – I think because of the characteristics of the particular piece of property I agree also.

Value of Surrounding Property:

P. Monziona – The request will not diminish the value of the surrounding properties, I think you will upgrade the real estate there, the location will still be in a good spot it appears and you will be getting further from the lake so I would say it would not diminish the property values.

S. Hurst – I agree

M. Perry – I agree

T. Morgan – I agree

Hardship:

S. Hurst – The zoning restriction as applied does interfere with the landowner's reasonable use of the property, considering the unique setting of the property in its environment and there is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property and the variance will not injure the public or private rights of others.

M. Perry – I agree

T. Morgan – I agree, I think it is an unusual piece of property when you have the setback from the lake and the setback from the road, it is pretty tough so the zoning restrictions in this instance do interfere with the piece of the property and I don't think there is a fair and substantial relationship between the

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general purposes of the zoning ordinance and the restrictions here, so the variance will not injure the public or private rights of others.

P. Monziona – I agree with all of that and the steep embankment and the land as it sits and the unique setting of the property as it sits.

Summary Statement:

T. Morgan –based on the above analysis, special conditions do exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

Motion made by M. Perry to approve Case #Z07-17 Map 52 Lot 31 using reference points, 65' from the center of the road and granting a variance for the distance of 12.5' be granted as the variance, seconded by P. Monziona. Motion passed with all in favor.

Approval of Minutes:

November 1, 2007 – **Motion made by M. Perry to approve the minutes as amended, seconded by S. Hurst. Motion passed with all in favor.**

Old Business:

S. Penney – Still trying to reference any precedence on limitation on continuances.

Motion made by P. Monziona to adjourn the meeting, seconded by S. Hurst. Motion passed with all in favor.

Respectfully submitted by
Jennifer Fortin