

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
Thursday, December 1, 2022, at 6:00 P.M.
Alton Town Hall**

MEMBERS PRESENT

Thomas Lee, Chair
Tim Morgan, Member
Paul LaRochelle, Selectman's Representative
Mark Manning, Member
Frank Rich, Member

Mike Hepworth, Member – excused absence

OTHERS PRESENT

John Dever, Building Inspector
Paul Zuzgo, Prospect Mountain Survey, Agent
Daniel and Trisha Lacroix, Owners
Ray & Dorothy Thomassian, Owners
Steven and Jean Avery, Trustees
Mark & Corinne Kinnicutt, Trustees, Owners

CALL TO ORDER

Chair Lee called the meeting to order at 6:00PM.

INTRODUCTION OF BOARD MEMBERS

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

APPOINTMENT OF ALTERNATES

No alternates are needed as a full Board is 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

The Board reviewed the agenda.

Mr. Morgan motioned to approve the agenda as presented. Mr. LaRochelle seconded the motion. Motion passed unanimously.

1. PUBLIC HEARING CONTINUED FROM NOVEMBER 3, 2022

Case #Z22-21 Kinnicutt Family Trust, c/o Mark & Corinne Kinnicutt, Ttees., Owners	Map 56 Lot 35 174 Woodlands Road	Variance Lakeshore Residential (LR) Zone
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A **VARIANCE** is requested to **Article 300, Section 327 A. 2** of the Zoning Ordinance to permit the construction of a garage 16.2' away from the property line at its closest point.

Chair Lee read the public notice into the record. Mr. Dever noted the applicant is not present at this time; the Board agreed to move the case to later in the meeting.

2. NEW APPLICATIONS

Case #Z22-26 Ray & Dorothy Thomassian, Owners	Map 34 Lot 33-142 39 Beacon Ave	Special Exception Residential Zone
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Special Exceptions to Article 300, Sections 320 D & F. to replace and expand an existing cottage that is Nonconforming for Use, one of multiple dwellings on a single lot.

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

Mr. Morgan motioned to accept the application for Case Z22-26 as complete. Mr. LaRochelle seconded the motion. Motion passed unanimously.

Mr. Thomassian stated he wants to demolish the current cottage and build a new one, approximately 12' from the point where it is currently located. He stated the current cottage is 100 years old; he started remodeling and determined it couldn't be done as there is no existing foundation. Mr. Thomassian stated the distance to the only neighbor is about 8' and it will be expanded to 20'.

Mr. Dever stated comments were received from the Christian Conference Center; the drainage and sewer system will be reconfigured in the area if this is approved.

Chair Lee noted the new house will be more in front of #42 than the existing cottage.

Mr. Dever stated the land goes down in that area and the view from #42 won't be impacted.

Chair Lee noted the current structure is 16' by 26' and the proposed is 24' by 28'. Mr. Thomassian stated the proposed size is in line with the maximum allowed by the campground.

Chair Lee noted the Article indicates that nonconforming uses shall not be altered, changed or expanded unless criteria are met and a Special Exception may be granted; he stated the

expansion makes the existing property more conforming because the distance is being expanded from the other home. He stated in-kind replacement may be permitted if the replacement complies with criteria such as the same square footage; he noted the application indicates the property was purchased as a seasonal cottage. Mr. Thomassian stated he would like to make the house usable for year-round use.

Mr. Rich noted in-kind replacement allows for the footprint to be realigned but the square footage can't change; he stated the plans indicate a substantial increase in footage although the setbacks are increasing as well. He suggested from a safety perspective, the Board should consider that more important than the additional square footage.

Mr. LaRoche asked if the total height of the house will change. Mr. Thomassian stated it might increase by 5' but its going to be similar to the current structure.

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 #Z22-26

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

Chair Lee stated that a plat/plan **has** been submitted in accordance with the appropriate criteria in the Zoning Ordinance, Article 520.B. The Board agreed.

Mr. LaRoche stated the specific site **is** an appropriate location for the use. Mr. LaRoche stated the houses in this area are tightly put together; the proposed structure being moved and relocated will also provide for a better property; he noted the use is not changing. The Board agreed.

Mr. Manning stated that actual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. No evidence has been presented to indicate values will be negatively impacted. The Board agreed.

Mr. Morgan stated there **is no** valid objection from abutters based on demonstrable fact. No abutters came forward and no letters or communications in opposition were received. The Board agreed.

Mr. Rich stated there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated the home is being relocated 20' away from the current location and will remain on the same plane. There is adequate parking. The Board agreed.

Chair Lee stated adequate and appropriate facilities and utilities **will** be provided to insure the proper operation of the proposed use or structure. He stated the current structure is old, with no

foundation; the old systems will be replaced and the use and structure are not changing. The Board agreed.

Mr. LaRochelle stated there is adequate area for safe and sanitary sewage disposal and water supply. He stated this will be addressed by the association; the sewer and electrical hookups will be replaced. The Board agreed.

Mr. Manning stated the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan as it brings the property into better conformance with the ordinance. The Board agreed.

Mr. Morgan motioned to grant the request for a Special Exception for Case #22-26. Mr. LaRochelle seconded the motion. Motion passed unanimously.

Case #Z22-27 Avery Living Trust, Steven and Jean Avery, Trustees	Map 16 Lot 25 Mount Major Highway	Special Exception Rural Zone
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A **SPECIAL EXCEPTION** to **Article 300, Section 360** to construct a non-habitable barn as the primary structure on a lot.

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

Mr. Morgan motioned to accept the application for Case #Z22-27 as complete. Mr. Rich seconded the motion. Motion passed unanimously.

Mr. Avery stated they want to build a barn on the property; they plan to build a house in a few years but the barn will be the primary structure until that time. It was noted the barn would be 100' by 50', with four bays; they plan to use it for storage use. It was noted the parcel of land is 112 acres and the barn will be located 300' from Mount Major Highway; the height of the ridge will be 26' and there will be a cupola that is 6'.

Mr. Morgan asked if the access points indicated on the plans, still exist. Mr. Avery stated those were used for logging in the past and are still there.

Mr. Dever confirmed department heads were notified and no concerns were indicated; NH DOT permission was discussed prior to the applicants coming to the Town for application.

Mr. Rich asked if the building will have electricity, plumbing or water. Mr. Avery stated they don't have plans for plumbing but want to put in a well so they can wash vehicles. Mr. Rich asked if there would be any sleeping facilities. Mr. Avery confirmed there would not be sleeping facilities and there won't be a bathroom.

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.

Mr. Dever stated he spoke with three of the abutters and none had any objections.

Chair Lee closed public input.

Discussion – Case #Z22-27

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

Mr. LaRoche stated that a plat/plan **has** been submitted in accordance with the appropriate criteria in the Zoning Ordinance, Article 520.B. The Board agreed.

Mr. Manning stated the specific site **is** an appropriate location for the use. Mr. Manning there is adequate amount of land, no need for a septic, the use is appropriate. The Board agreed.

Mr. Morgan stated that actual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated it is a large piece of land and won't affect values in the surrounding area. The Board agreed.

Mr. Rich stated there **is no** valid objection from abutters based on demonstrable fact. No abutters came forward and no letters or communications in opposition were received. The Board agreed.

Chair Lee stated there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated the barn will be set back 300' from the road and doesn't see any undue nuisance with the access ways. Mr. Morgan noted the access points are permitted. Board agreed.

Mr. LaRoche stated adequate and appropriate facilities and utilities **will** be provided to insure the proper operation of the proposed use or structure. He there won't be any bathroom facilities. The Board agreed.

Mr. Manning stated no sewage is required. The Board agreed.

Mr. Morgan stated the proposed use or structure **is** consistent with the spirit of this ordinance and the intent of the Master Plan. He stated this section provides for just this sort of thing. The Board agreed.

Mr. Morgan motioned to grant the request for a Special Exception for Case #22-27. Mr. Rich seconded the motion. Motion passed unanimously.

Case #Z22-28 & 29 Paul F. Zuzgo, LLS, Agent for Daniel and Trisha Lacroix, Owners	Map 5 Lot 46 16 Lane Drive	Variance and Equitable Waiver Rural Zone
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A **VARIANCE** to **Article 400, Section 452B** to permit the creation of a new lot of record that will have less than 200' of Road Frontage.

An **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** is requested in Accordance with **Article 500, Section 540 B.** of the Zoning Ordinance to provide relief for the existing garage which presently encroaches 18.3 feet into the 25' ROW setback at its closest

point.

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

Mr. Morgan motioned to accept the application for Case #Z22-28 and #Z22-29 as complete. Mr. Rich seconded the motion. Motion passed unanimously.

Mr. Zuzgo explained that since he completed the application and did the original boundary, he did not find the layout for the road so assumed it was a three rod road; he stated that since that time, the layout of the road was found for Lane Road and determined to be 30 feet wide so the garage would only be 1 foot into the right of way. Mr. Zuzgo stated it's a corner lot and has frontage on both Coffin Brook and Lane Road; he stated the applicant wants to subdivide the lot which has a house and a trailer but the frontage on Coffin Brook is only 186 feet which is less than the required 200 feet. He stated the trailer needs to be upgraded and the current tenants are wanting to purchase the subdivided lot; it was confirmed both lots would be conforming after the subdivision.

Mr. Rich asked if Mr. Lacroix has talked with his neighbors. Mr. Lacroix stated he has and the tenants in the trailer are good neighbors as well. Mr. Zuzgo stated three parties will have a hardship if this is denied: the tenants will lose a home as Mr. Lacroix doesn't want to be a landlord any longer; Mr. Lacroix will lose a house and the Town will lose a residential property. It was confirmed each lot will meet all other lot requirements, including wells and septic systems.

Mr. Dever stated he spoke with three of the abutters and none had any objections.

Mr. LaRochelle asked if this has been discussed with the Conservation Commission. Mr. Dever stated the Conservation Commission is opposed to the creation of nonconforming lots. It was noted if the lot line was adjusted to create the full 200 feet of frontage, the lot on Lane Road would be compromised.

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 #Z22-28 and 29

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

Chair Lee stated granting the variance **would not** be contrary to the public interest. He stated its an equitable situation, it makes sense, and it keeps the new lot legal with frontage on Coffin Brook. Mr. Morgan stated it's not a marked departure from the requirements of the ordinance

and as Mr. Zuzgo pointed out, no one will notice the difference. 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. He stated it is a subdivision to make the two properties more usable and it won't have any changes to the lots than adjustment of the boundary lines. The Board agreed.

Mr. Manning stated that by granting the variance, substantial justice will be done. Mr. Morgan stated the benefit to the applicant far outweighs any detriment to the public. The Board agreed.

Mr. Morgan stated the values of surrounding properties will not be diminished. There has been no evidence presented that would indicate values would be diminished. The Board agreed.

Mr. Rich 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. Rich stated the proposed use is reasonable. He stated the fact that the lot is a corner lot, there is a hardship and the applicant has demonstrated that and is doing the best he can with the lot to make it conforming. It was noted a large conformity is being removed, with two single family dwellings on the same lot. The Board agreed.

Mr. Morgan motioned to grant the request for a Variance for Case #22-28. Mr. LaRochelle seconded the motion. Motion passed unanimously.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:

a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

Chair Lee stated in regard to the garage and the right-of-way setback, it was not originally noticed and it is only 1 foot into the right-of-way; violation was not determined until after the building was built, in 1993. The Board agreed.

b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent or representative, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

Mr. LaRochelle stated dividing the property is making it better to have two separate dwellings on

two separate properties. The Board agreed.

c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

Mr. Manning stated the delta is so small and won't affect this or other properties. The Board agreed.

d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

The Board agreed.

Mr. Morgan motioned to approve the request for an Equitable Waiver for Case #22-29. Mr. Rich seconded the motion. Motion passed unanimously.

OTHER BUSINESS

- 1. Previous Business:**
- 2. New Business:**
 - a. Board to appoint the Officer's position of "Clerk"**

Mr. Morgan motioned to nominate Paul LaRochelle as Clerk of the Zoning Board of Adjustment. Mr. Rich seconded the motion. Motion passed unanimously.

b. 2022-2023 Proposed Zoning Amendments

Mr. Dever stated the public hearing for the proposed Zoning Amendments is scheduled for December 20, 2022.

Mr. Morgan noted there is no indication in the ordinance about needing a permit for the short term rental; he stated it is implied but not clearly specified that a permit is require . Mr. Dever explained that will be handled by the Board of Selectmen; he stated he will make sure the permit is addressed.

c. Public Hearing on the Master Plan

Mr. LaRochelle stated the public hearing is scheduled for January 10, 2023 with a snow date of January 24.

PUBLIC HEARING CONTINUED FROM NOVEMBER 3, 2022

Case #Z22-21 Kinnicutt Family Trust, c/o Mark & Corinne Kinnicutt, Trustees, Owners	Map 56 Lot 35 174 Woodlands Road	Variance Lakeshore Residential (LR) Zone
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A **VARIANCE** is requested to **Article 300, Section 327 A. 2** of the Zoning Ordinance to permit

the construction of a garage 16.2' away from the property line at its closest point.

The Board reviewed the application for completeness.

Mr. Morgan motioned to accept the application for Case #Z22-21 as complete. Mr. LaRochelle seconded the motion. Motion passed unanimously.

Mr. Kinnicutt stated they did a major renovation on the house in 2013 as a vacation home; he stated the decided last year they want to live in Alton full time and want to make some changes as the house has limited storage space and no office room. He stated they want to use space in the garage and create an office and mudroom. Mr. Kinnicutt stated the 50' setback doesn't allow for them to make any expansions towards the lake, and they are proposing to give up one bay of the garage and expand toward the street for the office and mudroom. He noted it is not unusual in their neighborhood to have garages near the street.

Mr. Rich asked if the applicants talked to their neighbors about the proposal. Mr. Kinnicutt stated they talked to them and there are no objections.

It was noted it would be about 17.4 feet from the road to the front door.

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 #Z22-21

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

Chair Lee stated granting the variance **would not** be contrary to the public interest. He stated work was recently done on Woodlands Road and there is no issues or concerns with neighbors or abutters. Mr. Morgan stated many other residents in the area have done the same thing and the proposal is not markedly different from the neighborhood. 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. He stated it is protecting the lake by not having any construction closer to the water or within the 50 foot setback. The Board agreed.

Mr. Manning stated that by granting the variance, substantial justice **will be** done. He stated it will improve the value to the house as well as the neighborhood. Mr. Morgan stated the value outweighs any detriment to the Town. The Board agreed.

Mr. Morgan stated the values of surrounding properties **will not be** diminished. There has been no evidence presented that would indicate values would be diminished. The Board agreed.

Mr. Rich 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:

- iii. *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;*
- iv. *The proposed use is a reasonable one.*

Mr. Rich stated the encroachment of the 6 feet, shows the hardship the applicant needs in order to build the expansion; the proposed use is reasonable based on the conformity of the lot size and the land. The Board agreed.

Mr. Morgan motioned to grant the request for variance for Case #Z22-21. Mr. Manning seconded the motion. Motion passed unanimously.

d. 2023 Planning Board/ZBA Meeting Schedule

The Board reviewed the proposed schedule.

3. Approval of Minutes:

Meeting of minutes of September 1, 2022 – Edits were made. Mr. LaRochelle motioned to approve the minutes as presented. Mr. Manning seconded the motion. Motion passed unanimously.

Meeting of October 6, 2022 – Edits were made. Mr. Morgan motioned to approve the minutes as amended. Mr. LaRochelle seconded the motion. Motion passed unanimously.

4. Correspondence:

Mr. Dever stated a previous applicant, who is also the Building Inspector in the Town of Barnstead, explained to him that if a proposal is going to make a property more conforming, it is allowed without asking for a variance. He stated that is something they are going to look at with the zoning amendments to see if that can be done.

Mr. LaRochelle motioned to adjourn. Mr. Rich seconded the motion. Motion passed unanimously.

The meeting was adjourned at 7:26PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary