

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
March 5, 2015
Approved 4/2/15**

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:02 p.m.

II. INTRODUCTION OF CODE ENFORCEMENT OFFICER AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, Board members, and Staff:
John Dever, Code Enforcement Officer
Paul Larochele, Member
Lou LaCourse, Member
Steve Miller, Member

Tim Morgan, member of the Zoning Board, was unable to attend this evening.

III. APPOINTMENT OF ALTERNATE

Currently, there are no alternates to the Zoning Board of Adjustment. Additionally, with four regular members present constituting a quorum, there is no need for an alternate.

IV. 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 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 has been or will be met.

V. APPROVAL OF THE AGENDA

S. Miller made a motion to approve the agenda as presented. P. Larochele seconded the motion which passed unanimously. (4-0-0)

VI. CONTINUED APPLICATIONS

Z15-04 David Bruhm	Map 44 Lot 53	Variance 134 Black Point Road
-------------------------------	----------------------	--

David Bruhm is requesting a Variance from Article 300, Section 327 A.2. of the Zoning Ordinance to permit construction of a garage that will encroach into the Town's twenty-five (25) foot right-of-way

(ROW) setback. The front of the proposed garage will be at the ROW line and approximately twenty-five (25) feet from the existing roadway. This property is located in the Lakeshore Residential (LR) Zone.

P. Monziona read the case into the record.

David Bruhm, the applicant, came forward to present. This application was accepted as complete at a past meeting.

Mr. Bruhm requested a continuance based on the fact that not all members are present, and he needs to add more items to his application as he has become aware that he needs an additional Variance to Article 400, Section 401. This goes back to the merger of the lots, which should not have been done because the lots are separated by Black Point Road, which is owned by Black Point Association. The lots are therefore not contiguous, which invalidates the lot merger. The Variance from Article 400, Section 401, would allow the garage to be constructed on a lot without a primary structure.

Documents showing the research on the right of way and deed setbacks for the association have been provided.

S. Miller asked if the fact that Mr. Bruhm has membership in the Association could extend to mean that he has some joint ownership of the right of way. J. Dever explained that the Association is a separate entity.

P. Monziona stated for the record that T. Morgan suffered a serious injury which has caused him to be unable to attend. That said, the opportunity to seek a continuance with only three members present is extended because, even though three members does constitute a quorum, all decisions would have to be unanimous. In that case, the continuance would not count against the two continuances allowed before the process has to be restarted. With four members present, any continuance requested would count as one of the two allowed.

Mr. Bruhm requested a continuance to the May ZBA meeting; he is unable to attend the April meeting.

S. Miller made a motion to approve the request for continuance; P. Larochelle seconded the motion which passed unanimously. (4-0-0)

VII. OTHER BUSINESS

A. Previous Business: Request for rehearing of Case Z14-28. One of the abutters made the request for rehearing; the request could not be heard last month because one member of the three present would have recused due to lack of familiarity with the original case, which would have removed the quorum.

P. Monziona explained that an abutter does have standing to request a rehearing; this was confirmed by Town Counsel. A rehearing is done entirely by the Board, without input from the public. Typically, the requirement is for the Board to look at the decision and the basis on which it was made, and determine whether there were any errors in procedure, or if anything was overlooked or misunderstood, or whether there were facts not presented at the hearing that might have influenced the decision of the Board. This does not mean that the Board is going to reverse or affirm their decision at this meeting; the decision now is whether to grant a rehearing

which may or may not change the outcome. This process is simply to determine whether errors were made or information not provided that could change the decision.

S. Miller asked P. Monziona if he is aware of any errors in procedure that might have been made, and also whether the abutter has offered any new information that would have impacted the decision of the Board. Absent of any new information, S. Miller stated that he does not see any reason for a change of opinion. P. Monziona agreed; if anyone could just come forward and request a hearing to be redone, final decisions would never be reached. There is a procedure in place, and the purpose of the discussion is to answer the points raised by S. Miller.

P. Monziona stated that he does not see anything procedurally wrong in the sense that the application was reviewed and accepted as complete, notice to abutters was appropriate and anyone concerned had a right to show up at the hearing and to present their evidence. The abutter requesting the rehearing was informed by abutter notice.

The burden of convincing the Board to grant a rehearing is on the requester. The abutter, in his written request for rehearing, stated that he does not believe that a zero setback does not reduce the value of the property. P. Monziona stated that while he does respect that opinion, that is an issue that was already determined. There was fair and adequate opportunity for the abutter to present that opinion, and the Board did take into consideration that there was not evidence before them that property values would be reduced. It is not enough for the requester to simply say they want to reargue the point. On that point, P. Monziona stated that in his opinion, there would not be grounds to grant a rehearing.

P. Monziona went on to say that there is one issue raised in the request for rehearing that he would like to discuss further, and that is that the abutter is stating that he spoke with Brian Boyer and John Dever, and that he had many conversations with Mr. Boyer, and that Mr. Boyer told him he did not approve the deck. When he approached Mr. Dever, he was told that there were two different stories, and that as Mr. Boyer was no longer employed by the town, they would use the records on file. P. Monziona agreed with that as it is really all there is to do. P. Monziona stated that one of the grounds for permitting this is that apparently Mr. Boyer, acting as Code Enforcement Officer/Building Inspector for the town, had been involved and approved it. At the original hearing, the issue of what Mr. Boyer did or did not do was fully explored and a determination was made that Mr. Boyer had allowed certain things to exist. Because of that, the outcome was affected. The request for rehearing is saying that Mr. Boyer said he did not approve the deck. If there were witnesses or documentation, a rehearing might be in order just to hear/see that new information, but all there is here is hearsay from one person. On that issue, P. Monziona stated that he is in agreement with Mr. Dever that all they can go on is what is in the file, which supports to notion that Brian Boyer allowed this to exist.

J. Dever stated that there was a patio or structure there to begin with, and the previous cottage had been destroyed by fire, which is part of it. S. Miller asked if the Board should enforce an unethical act; P. Monziona explained that these issues were brought up at the original hearing and was part of the decision making process. The Board had to consider whether Mr. Boyer had been out there and permitted certain conditions to exist which then affected the property owner.

P. Monziona went on to say that simply saying that conversations existed between the requester and Mr. Boyer, and that the requester disagrees with the Board's decision, does not constitute enough reason for a rehearing. A rehearing would impact not only the Board, but the applicant and all of the abutters, and this request is simply a disagreement with the decision and an

argument that has already been considered, and a statement about what Mr. Boyer said that is being contradicted by other evidence in the record. S. Miller asked if there is a form, or any formal steps a person must take to request a rehearing. P. Monziona explained that the requester must present to the Board valid grounds for rehearing, and those valid grounds would be that the Board overlooked something, or that there is evidence that could not be presented until later, the Board made a mistake – it just can't be because the requester disagrees or comes forward with something said by someone. This request for rehearing does not, in his opinion, meet the burden of showing that something was done wrong because all of these points were considered. Right or wrong, the requester needs to demonstrate beyond this level to be entitled to having the applicant and the Board start again.

S. Miller stated that in the absence of any new evidence, he sees no reason to grant a rehearing.

L. LaCourse asked if the information about the deck was discussed; members and J. Dever confirmed that the deck was discussed at the hearing. L. LaCourse stated that he does not see a reason to grant a rehearing because the deck location was discussed at the hearing, and the rest is just disagreement. P. Monziona confirmed that there was lengthy discussion concerning the existence of a deck on the original structure.

S. Miller made a motion to decline the request for rehearing of Case Z14-28. L. LaCourse seconded the motion which passed unanimously. (4-0-0)

B. New Business: There was none.

C. Minutes: February 5, 2015

P. Larochelle made a motion to approve the minutes of February 5, 2015, as presented. S. Miller seconded the motion, which passed with 3 votes in favor and 1 abstention (L. LaCourse). (3-0-1)

D. Correspondence: The variance for road frontage on the two-lot subdivision on Reid Road had an error in the narrative concerning the footage; it was off by about 1.5 feet. The plans used by the Board were correct; the error was only in the narrative. The notice of decision has been amended and will be signed by P. Monziona.

VIII. ADJOURNMENT

L. LaCourse made a motion to adjourn; the motion was seconded by P. Larochelle and passed unanimously. (4-0-0)

The meeting adjourned at 7:45 p.m. The next regular ZBA meeting will be held on April 2, 2015, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session