

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

APPROVED

Members Present:

Paul LaRochelle, Chairman
Lou LaCourse, Vice-Chairman
Paul Monziona, Clerk
Tim Morgan, Member
Frank Rich, Member

Others Present:

John Dever, III, Code Official

CALL TO ORDER

Paul LaRochelle called the meeting to order at 6:00 P.M.

APPOINTMENT OF ALTERNATES

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, 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 have been or will be met.

APPROVAL OF AGENDA

Lou LaCourse MOVED to accept the agenda as presented.

Paul Monziona seconded the motion, and it PASSED by a vote of (5-0-0).

NEW APPLICATIONS

Case #Z19-06 Cynthia A. Johnston, Trustee of the Noble Realty Trust, and Jason J. Schopper & Luciana A. Rodrigues, Owners	Shields Way Map 37 Lot 29-2	Special Exception Lakeshore Residential (LR) Zone
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A Special Exception is requested from **Article 300 Section 360. 2.**, of the Zoning Ordinance to permit the construction of a garage as the principal building on a lot in the Lakeshore Residential Zone.

The Chairman read the notice into the record.

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
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Present were Cynthia A. Johnston, Trustee of the Noble Realty Trust, and her son, Jason J. Schopper, owners.

**Tim Morgan MOVED to accept application #Z19-06 as complete.
Paul Monzzone seconded the motion.**

DISCUSSION:

Paul Monzzone noted that the applicants did not need a representation letter because they were representing themselves. He noted that there was a reference to Jim Sessler, Esq., Town Counsel's, comments. John Dever, III, stated that he did not receive any correspondence back from Jim Sessler, Esq., but they did discuss the content of the application.

Paul LaRochelle asked the Board for a vote; the motion PASSED with a vote of (5-0-0).

Cynthia A. Johnston and Jason J. Schopper came to the table. Cynthia A. Johnston asked the Board if they had any questions for them. Tim Morgan asked John Dever, III, to elaborate on Jim Sessler, Esq.'s comments. John Dever, III, stated that Jim Sessler, Esq.'s, comments about the application were positive. The lot that the garage was being built on was owned in common by four residences, but the deeds very clearly stated that each lot extended their property lines straight back to NH Route 28A, and that was their area for their use. Tim Morgan asked if that use could accommodate the construction of a permanent building; John Dever, III, stated, yes. Paul LaRochelle asked if their portion of the lot was shared by the three (3) other property owners. Cynthia A. Johnston stated, no, their portion and the garage was for their use only. Paul Monzzone asked if Jim Sessler, Esq., addressed the issue of whether the applicant had to inform all of the property owners. John Dever, III, stated that all of the other property owners were notified.

Paul Monzzone stated what he meant was, whether the other owners also had to be the applicants because it was an undivided lot and was owned by all of the owners, but yet only one of the named owners made the application. John Dever, III, stated that Jim Sessler, Esq., did not have a problem with that because of the way the property was designated that the other owners could not use that particular portion of the lot. Paul Monzzone asked if the other owners were notified as abutters; John Dever, III, stated, yes. Frank Rich asked who the other three (3) property owners were. Cynthia A. Johnston stated the Kennedy's, Diana Miller, and the Estes. She stated that two (2) of the owners had their leach fields on their section of the lot. Paul LaRochelle asked where Shields Way was located. Cynthia A. Johnston stated that Shields Way was at the bottom of the hill off Donald Drive. She indicated that Donald Drive ran parallel with NH Route 28A. Lou LaCourse asked if the garage met the setbacks on the lot. John Dever, III, stated that the garage did not encroach within any setback.

Paul Monzzone stated that the lot did not have an actual boundary line; it was just a line that demarcated where the exclusive use area was, being 1/4 owner of the property. John Dever, III, demonstrated where the boundary lines were on the lot to the Board. Paul Monzzone noted that the garage was located to satisfy all setback requirements for boundary and right-of-way setbacks, but he thought that all four (4) owners

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

APPROVED

should be the applicants. He pointed out that there was only one (1) owner making an application for the whole lot. Cynthia A. Johnston stated that when the other owners put in their leach field, they were not required to obtain anything from the other owners. Paul Monzione clarified that he was not talking about approvals that one would obtain from a governmental entity like DES. He was referring to when an applicant applied to the ZBA for a Variance or Special Exception, etc., the person who had the legal right to apply was the property owner; therefore, this application only had one (1) out of the four (4) applicants applying. He thought the application was incomplete because not all of the property owners applied as applicants. The other owners were only notified as abutters, and what if the other three (3) owners were against the application. The other owners could show up at the meeting and make the argument that they were a legal owner and they did not agree with the application, and then the application would be tossed out until all the owners applied. Paul Monzione noted that what if one of the other owners wanted to put a garage on their section of the lot and the Zoning Ordinance only allowed one ancillary garage on one lot; that would preclude the others from doing the same thing as this applicant. It was important that the other owners know about that. He noted that he had never seen a case before the ZBA where a co-owner was not on the application, but instead had been notified as an abutter; that could be an issue for someone to make a fuss about, and he did not like voting on things that were vulnerable to attack by other people.

Cynthia A. Johnston stated that as far as the application went, did Town Counsel have a chance to look at it. John Dever, III, stated that he did discuss the application with him and he had no objections with the way it was submitted. Tim Morgan thought that Paul Monzione's point about there only being one building on the property would preclude the other owners from doing something similar on their portion of the lot. Cynthia A. Johnston asked if that was true that the other owners would not be able to. Tim Morgan stated that the ordinance was written in a way that only one ancillary building could be built on one lot. Paul Monzione shared that at one point, the Zoning Ordinance did not permit an ancillary structure standing alone on a lot, but recently within the last 3 years, the Zoning Amendment Committee drafted an ordinance that permitted ancillary structures on a lot by themselves. John Dever, III, shared with the Board that Section 360. Non-habitable structure as principal building on a lot, did not specify how many buildings could be built on the lot. Paul Monzione thought that the ordinance stated it right in the heading, "principal building". He did not think that would allow for additional buildings. He understood what John Dever, III, was saying, but he still questioned the number of buildings allowed because all of the uses were worded like, "1. A shed.....", "2. A private garage.....", "3. A private garage.....". Paul LaRochelle asked if there was anything in writing from the other owners stating they were okay with the construction of the garage in that area of the property that was mutually owned. Cynthia A. Johnston stated that she was unaware that she needed anything in writing, but thought that she could obtain something. She shared that she called the owners that were on each side of her and discussed her proposal and they were both okay with the construction of the garage. She contacted the third owner, but had to leave a message that if they had any questions or wanted to see any of the documents attached to the application, to just talk to her. John Dever, III, pointed out that the third owner was not a direct abutter, but they still received notification of this application. Lou LaCourse pointed out that if the interpretation of the ordinance only specified one principal building on a lot, then that could cause an issue for the other owners. John Dever, III, stated that in his opinion, the lots were separated out and were indicated in the deeds that no one else could use their portion of their property. Paul Monzione stated that the owners could get together and reconfigure their use amongst themselves. He pointed out that what went on with the deed, the Town had no control over other than the Zoning Ordinances, and the four (4)

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

APPROVED

owners could get together and file an amended deed at any point in time in the future. John Dever, III, pointed out that the lot could not be subdivided into four (4) separate lots, but they could submit a Boundary Line Adjustment application to the Planning Board. Paul Monzione stated that his concern was that if the owners had a falling out at some point in the future, and then they stated that the Town gave them approval for the garage, but all the owners were not listed on the application and instead the other owners were only given abutter notification, maybe that person could come after the Town to undo what the Board approved. He was not sure if he was reading into this too much, but he was a lawyer and what lawyers tended to look for was if there would be any issues in the future, and they worked towards preventing them.

Frank Rich asked Ms. Johnston if there was a designated area that they owned on the property and were the other three (3) owners aware of the application; she stated, yes, it was laid out in the deed and the other owners were notified. Frank Rich asked if one of the other owners wanted to construct a garage, but they could not conform to the setbacks, he was worried that they were going to come back to Ms. Johnston and the Town and say that they needed to be informed that they could not construct a garage on the property. It was Frank Rich's opinion that Ms. Johnston's application should have all four owners as applicants. Paul Monzione noted that in his opinion, the deed granted a specific $\frac{1}{4}$ interest in the entire parcel to each of the owners, and it went on to grant exclusive use as to certain designated areas; there was a difference between a granting of exclusive use and a granting of ownership. The only way someone could be granted ownership in just that portion of the property would be to subdivide. The only legal way to own the portion of the property was to own $\frac{1}{4}$ of the whole lot because if Ms. Johnston owned only $\frac{1}{4}$ of the lot, it was a de facto subdivision, which had not occurred. Each of the four (4) owners owned the whole lot. The deed further stated that each owner could use a specific portion, and that could at some point be changed in the deed if all four (4) owners wanted to. Paul Monzione wanted to eliminate any legal issues and felt more comfortable if all four (4) owners were the applicants. Cynthia A. Johnston understood what Paul Monzione was saying, and if that was the case, each owner would own 25% of the garage. Paul Monzione stated that the structure and the land were two different things; the deed did not convey an improvement because the garage was added on after the fact.

Tim Morgan did not have any particular concerns about the Town's liability, but he thought that the Board could make a reasonable determination about what was being applied for and what the language said, but he did have a great concern about Ms. Johnston's liability and what might happen in the future. He did not like the possibility of the garage having to be taken down, because as Mr. Monzione pointed out, the Board did not have an application from all of the owners, and they did not have any letters of approval from the other owners. Frank Rich suggested that Ms. Johnston purchase the lot and give the other owners easements to their leach fields.

Paul LaRochelle asked Ms. Johnston to have all of the owners sign the application if they were in agreement and then re-apply; not every owner needed to attend the meeting, but they needed to be listed as owners on the application itself.

Marcia Estes came to the table. She stated that her and her husband lived at 12 Donald Drive, which was originally owned by her husband's grandmother, his father, and his uncle. The common property in the back was originally purchased by the four original residents, the Estes', the Kennedy's, the Travers', and

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

APPROVED

the Joyce's. The purpose was to keep a buffer between the houses and the road, to maintain an environmentally aesthetic area that would also serve to filter the run-off drainage from the road to the lake, to maintain a wildlife corridor for the animals to access the lake, and to prevent any development on that piece of property. Marcia Estes stated that she was attending the meeting because she opposed the granting of the Special Exception for the construction of the garage as a principal building. She too had the question that if there was one garage, would there be more. She was also concerned because in Section 360. Of the Zoning Ordinance, it stated that the architectural style, building size, building height, and exterior building materials would be visually compatible with other buildings in the neighborhood; the proposal was to build a 20' x 30' garage and that was considerably larger than the camps that were in that area; the camps were about 20' x 20'. Paul LaRochelle brought up a point of order; he thought that Mrs. Estes was with the applicant, and stated that the Board was not open for public input at this time. Mrs. Estes stated that she was one of the owners of the lot. Paul Monzzone noted that Mrs. Estes was one of the owners of the lot and she was in opposition to the application. He thought that maybe the applicant could amend their application to include all of the owners, and continue it to the next meeting. Paul LaRochelle asked if the applicant was interested in what Paul Monzzone suggested. Cynthia A. Johnston stated that she was interested but now she was concerned because of what Mrs. Estes expressed.

Paul Monzzone MOVED to allow the applicant to amend their application for Case #Z19-06 to include all four of the owners of Map 37 Lot 29-2 to avoid any additional fees, and continue the applicant to the following scheduled meeting on April 4, 2019.

Tim Morgan seconded the motion, and it PASSED with a vote of (5-0-0).

Case #Z19-07 Thomas W. Varney, P.E., of Varney Engineering, LLC, Agent for Brian & Elizabeth Mezey, Owners	69 Mount Major Hwy. Map 34 Lot 33-17	Special Exception Residential (R) Zone
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A Special Exception is requested from Article 300, Sections 320 A.4, 6 & 7; B. 2. c. & 5, of the Zoning Ordinance to permit an existing cottage to be torn down and replaced with a new building lengthened six (6') feet and 1.9' taller.

Case #Z19-08 Thomas W. Varney, P.E., of Varney Engineering, LLC, Agent for Brian & Elizabeth Mezey, Owners	69 Mount Major Hwy. Map 34 Lot 33-17	Variance Residential (R) Zone
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A Variance is requested from Article 300 Sections 320.B. 5. b. & c., of the Zoning Ordinance to permit the extension of the upper floor within the twenty-five (25') foot setback.

Case #Z19-09 Thomas W. Varney, P.E., of Varney Engineering, LLC, Agent for Brian & Elizabeth Mezey, Owners	69 Mount Major Hwy. Map 34 Lot 33-17	Variance Residential (R) Zone
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A Variance is requested from Article 300 Section 320.B. 2. d., of the Zoning Ordinance to permit the conversion of a porch to living space within the twenty-five (25') foot setback.

The Chairman read the notice into the record.

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

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Present was Thomas W. Varney, P.E., agent; Brian Mezey, owner; and Roy Darling, contractor.

Tim Morgan thought that if the warrant article that would affect Section 320 were to be voted on next Tuesday and passed, it would make it easier to approve Variances and Special Exceptions. Paul Monzione agreed, and mentioned it would especially affect applications that were seeking to expand an existing structure. Thomas W. Varney, P.E., stated that the campground had a deadline for residents to start construction by April 1 and complete construction by July before people started filling up the campground. Brian Mezey appreciated that the Board was trying to make him aware that the ordinance could change and make it easier for him to obtain approval, and he was thankful that Thomas W. Varney, P.E., put into consideration that he had a timeline to bring the property to a restored state. Paul Monzione was concerned that this might not pass because the ordinance stated that the replacement did not have to be granted on a structure that was voluntarily removed, which meant that he would have to keep the structure at the same square footage in the building area. He always struggled with people voluntarily tearing down a building and then wanting to make it much larger.

John Dever, III, stated that the Board could allow Brian Mezey to make the appropriate changes to the Sections as they would be adopted, on his application. Brian Mezey understood that Special Exceptions and Variances had been approved for other owners on the property under the advisement of the Building Inspector and the Fire Department, which was the only reason why he came forward with an application, knowing that an application was required. Tim Morgan stated that he was correct; there had been some Variances permitted at the campground, however, Brian Mezey was looking for two Variances and one Special Exception, which was an unusual amount of requests. Brian Mezey stated that when he worked with John Dever, III, on his requests, he believed that there were small de minimis modifications for the interior and one was vertical by not expanding the footprint; there was only one modification that would impact the northwest/southeast dimensions of the property. By separating them, it was believed that it would prevent a hang up with the process and gave it the ability for them to be approved independently.

Roy Darling stated that if the Special Exception and the Variances were to pass at tonight's meeting, they would be able to start construction within a week. Paul Monzione wanted to clarify that it was not up to the Building Inspector or the Fire Department to recommend anything; it was their comments that the Board received from them that might affect the Board's determination. Paul Monzione pointed out that 168 additional s.f. of living space was going to be added and the structure was going to be 2' higher; he always felt uncomfortable just saying that was okay, it was not big difference. He stated that the Board's job was not to determine what was de minimis and what was considered a lot, and on the rare occasions that there had been very small additions, he had always objected to it. He felt that the Zoning Ordinances should be strictly abided by and applied to. Paul Monzione was hoping that when the townspeople voted, they voted for the change in Section 320.

Brian Mezey stated that he was not aware that there was a proposed change in the ordinance that would have impacted the way he would have submitted his request. Paul Monzione stated that the proposed ordinance would allow the Board to have opportunity to have some discretion on the s.f. of an addition that was being added on a nonconforming structure that was being rebuilt. Tim Morgan stated that currently, the ordinance Brian Mezey applied under did not allow what he was proposing, but the proposed ordinance would give the Board the discretion to listen to Mr. Mezey's argument as to why it

**TOWN OF ALTON ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES 2019
MARCH 7, 2019**

APPROVED

would be appropriate and they would make their decision on that basis.

Brian Mezey asked if the application was continued to April, and the townspeople voted no for the proposed ordinance, would his application be submitted the same way as it was for this meeting; Paul LaRochelle stated, he was correct. Thomas W. Varney, P.E., stated that he would resubmit the application with the change in the Section if it was voted in by the townspeople.

**Tim Morgan MOVED to accept applications #Z19-07, Z19-08, and Z19-09 as complete.
Frank Rich seconded the motion, and it PASSED with a vote of (5-0-0).**

Paul Monzione MOVED to continue Cases # Z19-07, Z19-08, and Z19-09 to the following scheduled meeting on April 4, 2019, in order to allow the applicant to amend the application as they saw fit in accordance with the results of the Town Election on March 12, 2019, and that the applicant did not have to pay any additional fees.

Tim Morgan seconded the motion, and it PASSED with a vote of (5-0-0).

OTHER BUSINESS

1. Previous Business:
2. New Business: Lou LaCourse did not run for another term; therefore, this will be his last meeting.

After some discussion, Lou LaCourse offered to sit on the Board as an alternate.
3. Approval of Minutes: February 7, 2019

**Tim Morgan MOVED to approve the minutes of February 7, 2019, as presented.
Paul Monzione seconded the motion, and it PASSED unanimously by a vote of (5-0-0).**

4. Correspondence:

ADJOURNMENT

**At 7:23 P.M., Lou LaCourse MOVED to adjourn.
Frank Rich seconded the motion, and it PASSED by a vote of (5-0-0).**

Respectfully submitted,

Jessica A. Call
Recording Secretary

Minutes approved as amended: May 2, 2019