

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
April 2, 2015
Approved as amended 5/7/15**

I. CALL TO ORDER

Paul Monzione called the meeting to order at 7:03 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

Tim Morgan and Steve Miller, members of the Zoning Board, were unable to attend this evening.

III. APPOINTMENT OF ALTERNATE

Currently, there are no alternates to the Zoning Board of Adjustment.

P. Monzione explained that two continuances may be granted at the request of the applicant; a third request for continuance would require that the applicant begin the process anew. In the case of a three member Board, which does legally constitute a quorum, a continuance would be granted at the request of the applicant without penalty to the applicant. The reason for the “free” continuance would be that cases heard by a three member Board would have to meet all criteria with unanimous support of all three sitting members.

P. Monzione gave both applicants on the agenda an opportunity to continue, but both of them decided to go forward this evening.

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

J. Dever asked that appointment of ZAC members be added to the agenda under New Business.

P. Larochelle made a motion to approve the agenda as presented. L. LaCourse seconded the motion which passed unanimously. (3-0-0)

VI. NEW APPLICATIONS

Z15-05 J.A.G. Alton Realty LLC	Map 15 Lot 59B	Special Exception 20 Hurd Hill Road
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On behalf of J.A.G. Alton Realty LLC, Thomas W. Varney is requesting a Special Exception from Article 400 Section 401 of the Zoning Ordinance to permit a retail store for sale of landscape materials. This property is located in the Rural (RU) Zone.

P. Monziona read the case into the record. The application was reviewed for completeness.

L. LaCourse made a motion to accept the application for case Z15-05 as complete; P. Larochelle seconded the motion which passed unanimously. (3-0-0)

Tom Varney of Varney Engineering came forward to present. This building is the 2nd Lundy building, just before the landfill, on the right. The applicant is requesting a change from contractor use to a retail business. Al Graymont, also present, purchased the property from Rick Lundy in 2013; it has been used to house construction vehicles and materials. Mr. Graymont would like to use the property to stock and sell landscape materials such as gravel, bark mulch, loam, sand, etc. An office is to be constructed to support retail sales. There will be a loader and several trucks also housed on the site which will support the business. Planning Board approval is required before startup. The property has been environmentally upgraded including restoration of wetlands on the lot.

An apartment is to be constructed at a later date on the second floor of the building; there is a three bedroom septic on the site.

Hours of operation will be 7:00 a.m. to 5:00 p.m. Monday through Saturday, and 9:00 a.m. to 4:00 p.m. on Sunday. There will be 2 – 3 employees.

The land is already developed with good parking and an entrance off Hurd Hill Road. Landscaping materials will be in bins around the lot and will be for sale to homeowners wanting to make improvements and to landscaping contractors. There will be a couple of employees and pick-up trucks, with a loader to load trucks or trailers. This is just a change from a contractor shop to retail.

P. Monziona questioned whether there have been any changes to the plans which are dated in 1989 and 1990. T. Varney pointed out that more recent plans done were specific to a prospective buyer, but that sale did not go through, so the older plans are more relevant.

P. Monziona asked if the property is zoned for mixed use, as mention was made of constructing an apartment. J. Dever explained that when the approval was granted for the Lundy property, an apartment was part of the plan. That approval was for a repair shop with another building that would be garage and office; the proposal for the area above the repair shop was to be residential.

P. Monziona questioned the section of the table of uses this would come under; T. Varney and J. Dever both determined that the use would be retail. It will include the outside bins, a small office to support the retail operation, and some equipment. P. Monziona explained that once the approval is granted for retail use, the retail use can be whatever a new owner might determine. J. Dever agreed but added that

if a different retail operation were to purchase the property, they would still need Planning Board approval.

L. LaCourse asked if the outside storage bins were clear of the setbacks; T. Varney answered that they are. The side and back setbacks are 10' and the front setback is 25'.

P. Monzione asked T. Varney and Mr. Graymont if they had seen the letter from Deputy Fire Chief and Inspector Richard Brown; Chief Brown raised a question of the type of sheetrock to be used in the building. Chief Brown's suggested requirements outline fire safety issues and building to fire code. P. Monzione explained that the ZBA often will make department head suggestions conditions of the approval and asked the applicant if there would be any problem with that. T. Varney stated that there would not be a problem; Mr. Graymont assured the Board that he intended to meet all applicable fire safety codes anyway. Complying with this as a condition would be expected when the construction is underway.

T. Varney addressed the facts to support the request. He stated that the site is appropriate because the existing use is a contractor shop which is retail business or service. The property values in the area will not decrease because retail sales is similar use to a contractor shop. There is no valid objection from abutters because the driveways, parking and buildings will remain the same. The proposed use is much less intensive than the adjacent landfill. There is no nuisance to vehicular or pedestrian traffic; the driveway access will stay the same and the traffic increase will be very small in relation to the existing landfill traffic. Adequate facilities and utilities will be provided to insure the operation of the proposed use. The size of the lot provides ample room for the proposed operation. There is adequate area for safe and sanitary sewage disposal and water supply as they are both existing. P. Monzione asked about the size of the septic; T. Varney explained that it was designed for 500 gallons a day of use, which covers 3 bedrooms plus. The proposed use is in line with the spirit of the ordinance and the intent of the Master Plan because the property has been environmentally upgraded, and the use of the property for retail sales is an allowed use. T. Varney added that the land has been improved from what it was; there were some wetlands that were in violation that have been restored and the property has been made more attractive overall.

L. LaCourse asked if there is going to be a significant increase in traffic on Hurd Hill Road, or if there are going to be heavy trucks going in and out for deliveries. T. Varney stated that there will be very little increase in traffic. P. Monzione raised concern about the increase in traffic competing with traffic to the transfer station; T. Varney pointed out that the road dead ends at the landfill, and there will be a very minimal increase in traffic as it is. Mr. Graymont added that it is going to take a while for the business to get up and running. He intends to keep it neat and clean and will go about everything the right way. The larger delivery trucks will not be coming and going daily, and he will try to schedule deliveries around the off days at the landfill as much as he can.

There will be no plants/trees for sale; this is intended just for landscape materials. P. Monzione addressed the traffic issue as well, stating that as this business gets busier it could expand. Both P. Monzione and L. LaCourse acknowledged that they have not seen traffic backups coming in and out of the landfill now. Mr. Graymont also added that some of the sales will be generated by a phone call and delivery by his employees, which will also reduce the traffic.

The floor was opened to public input; there was none. Public input was closed. There was no further input from the applicant.

P. Monziona commented that once this is established as a retail property, which could open it up to all kinds of retail operations; he also acknowledged J. Dever's earlier comment that the Planning Board would still have to approve any new operation that is proposed. Traffic needs to be considered because the Board does not want to create a situation for traffic affecting the landfill and how the traffic will flow. The prior operation was a few excavators and trucks. Personally he thinks the road will handle it; 28A is slow and small in that area, but traffic is one of the criteria for approval.

WORKSHEET

P. Larochelle stated that a plat **has been** accepted in accordance with the Town of Alton Zoning Ordinance 520B. P. Monziona and L. LaCourse agreed.

P. Monziona stated that the specific site **is** an appropriate site for the planned use; it is currently used as a contractor's yard with all of his equipment, trucks, etc., and it is permitted according to the regulations, by Special Exception. L. LaCourse and P. Larochelle agreed.

L. LaCourse stated that factual evidence **is not** found that property values in the area will be reduced due to incompatible uses. This property is currently a business, and the change should not have any affect on property values in either direction. P. Larochelle agreed. P. Monziona agreed and added that based on representation from the applicant it looks like this is going to be a clean, well-organized operation.

P. Larochelle stated that there **are no** valid objections from abutters, based on demonstrable fact. There were no comments from anyone. P. Monziona agreed; no one came forward to object, and there is nothing in the application that would be objectionable. L. LaCourse agreed.

P. Monziona stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways or off street parking; off-street parking is well laid out in the plan and it is not going to be an issue here, even if this becomes a very busy retail business. There may be some increase in traffic there, and people may have to slow down or be mindful of the fact that there is a business there, but he does not think it is going to create an undue nuisance or a serious hazard to pedestrian or vehicular traffic. He also thinks the roads can accommodate what is likely to happen. L. LaCourse and P. Monziona both agreed.

L. LaCourse stated that adequate and appropriate facilities and utilities **will be** provided to insure the proper operation of the proposed use or structure; this will be assured by the Planning Board and also by conditions that will be attached to this approval. P. Larochelle and P. Monziona both agreed.

P. Larochelle stated that **there is** adequate area for safe and sanitary sewage disposal and water supply; there is an adequate three bedroom septic and well on the property. P. Monziona and L. LaCourse agreed.

P. Monziona stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. The transfer station is right up there and there are other retail businesses in close proximity, and this is use permitted by Special Exception. L. LaCourse and P. Larochelle agreed.

L. LaCourse made a motion to grant the Special Exception for Case Z15-05 with the condition that they meet the Fire Department recommendations as put forth by Deputy Chief Brown's letter dated 3/23/15. P. Larochelle seconded the motion which passed unanimously. (3-0-0)

Z15-06 Shawn Kearns	Map 35 Lot 51	Variance 195 East Side Drive
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Shawn Kearns is requesting a Variance from Article 300 Section 320 B.2.b of the Zoning Ordinance to permit addition of a 4X12 cantilevered deck to the lakeside of the house which will encroach into the 30' shorefront setback. This property is located in the Lakeshore Residential (LR) Zone.

P. Monziona read the case into the record. Shawn Kearns came forward to present. The application was reviewed for completeness.

P. Larochelle made a motion to accept the application for Case Z15-06 as complete; L. LaCourse seconded the motion which passed unanimously. (3-0-0)

Mr. Kearns explained that he would like to build a small deck on the lake side of his home. He purchased the home in October of 2014. Currently, work is being done on the block wall at the property. The deck will not have stairs; it will only be accessible from the house. The cottage was renovated in 2010; there is a steel beam across the back (lake side). The deck will be cantilevered with no supports to the ground. The applicant has spoken to NH-DES regarding a lakeshore permit; according to Craig at DES, there is no need for a permit as the deck is going over a surface that is impervious. The sliding door access will match the existing doors. The deck will be constructed using PVC. The houses on both sides of this property currently have decks; there will be no roof over the deck.

J. Dever used a diagram to show the setback limitations of the property. The lot is 3,484 square feet; no part of the lot is out of encroachment in the setbacks. There is a septic design with approval from DES to allow the septic system to encroach in the setback of Route 28A. There was a discussion concerning the requirements of granting this variance; expansion needs to be into the building envelope, but this property has no building envelope. Because there is no building envelope, a variance is needed. According to what J. Dever can see, there has never been a building envelope since the onset of zoning.

P. Monziona clarified through questioning that the four foot dimension will be extending out from the building and that there will be no supports to the ground. The deck supports will be cantilevered back to the structure.

The Conservation Commission voiced concern about trees; there are no trees that will be affected by the deck.

The floor was opened to public input; there was none. Public input was closed.

The applicant added that there will be no deterrent to the appearance and that the deck will make the cottage blend in better.

WORKSHEET

P. Larochelle stated that the variance **will not** be contrary to the public interest. This is going to look very familiar and in conformity with other surrounding properties. P. Monziona agreed. L. LaCourse agreed and added that being next to the lake, a deck is needed.

P. Monziona stated that the request **is** in harmony with the spirit of the zoning ordinance and the intent of the Master Plan, and with the convenience, health, safety and character of the district within which it is proposed.

The zoning ordinance permits someone with a structure entirely within the setback to build an addition as long as it stays within the building envelope. In this case, there is no building envelope because of the unique characteristics of the lot size and the fact that the lot is situated almost entirely within the setbacks of the right of way and lake. Therefore it is within the spirit of the ordinance and the intent of the Master Plan, and the health, convenience, safety and character of the district are being met in this case because a deck is an appropriate addition to this structure, particularly in harmony with other structures around it, and for a lake house. L. LaCourse and P. Larochelle both agreed.

L. LaCourse stated that by granting the variance, substantial justice **will be** done; as discussed, there are many buildings surrounding this home which have decks and porches. If anything this will bring the structure to the same measure as other buildings. P. Larochelle and P. Monziona both agreed.

P. Larochelle stated that the request **will not** diminish the value of surrounding properties; again, this will now look like other properties, so it will not hurt in any way. P. Monziona and L. LaCourse both agreed.

P. Monziona stated that for purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; **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; the proposed use **is** a reasonable one. The proposed use in this case is certainly a reasonable one for the purpose of a deck on a lake house on the water. It is certainly a reasonable use, particularly considering the other surrounding structures that already have a deck. The ordinance allows the addition on a structure that is completely within the setback, within the building envelope, but the special condition of this property that distinguish it from other properties is that there is no building envelope; the lot itself is almost entirely completely within setbacks. For those reasons, this criterion is being met. L. LaCourse and P. Larochelle both agreed.

L. LaCourse made a motion to grant the request for variance in Case Z15-06. P. Larochelle seconded the motion which passed unanimously. (3-0-0)

VII. OTHER BUSINESS

A. Previous Business: The rehearing discussed during the last several meetings is, according to the abutter who requested the rehearing, going to be taken to Superior Court.

B. New Business: Election of Officers
Appointees to the ZAC

According to the by-laws, election of officers is to happen in March, or whenever the Board deems it appropriate to do so. Given the fact that only three of the five members are in attendance at this meeting, the Board decided to delay elections to the next meeting when more members will likely be present.

L. LaCourse made a motion to move election of officers to the next meeting (or later if needed), and to maintain offices as they currently exist. P. Larochelle seconded the motion which passed unanimously (3-0-0)

The July meeting falls on July 2; there should be no conflict with the 4th of July holiday.

ZAC members – the first meeting will be on April 22, 2015 at 6:00 p.m. After discussion, P. Monziona and P. Larochelle committed to this committee.

C. Minutes: March 5, 2015

**P. Larochelle made a motion to approve the minutes of March 5, 2015, as presented.
L. LaCourse seconded the motion, which passed unanimously. (3-0-0)**

D. Correspondence: None

VIII. ADJOURNMENT

L. LaCourse made a motion to adjourn; the motion was seconded by P. Larochelle and passed unanimously. (3-0-0)

The meeting adjourned at 8:20 p.m. The next regular ZBA meeting will be held on May 7, 2015, at 7:00 p.m. at the Alton Town Hall.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session