

Alton Zoning board of Adjustment  
Alton Town Hall

August 2, 2007  
7:00pm

Approved by the ZBA on 9/6/07

**Members Present:** Tim Kinnon, Marcella Perry, Steve Hurst, and David Schaeffner

**Members Absent:** Tim Morgan and Paul Monziona

**Others Present:** Sharon Penney – Town Planner, Jennifer Fortin – Secretary Pro-Temp, and other as mentioned below.

**Call Meeting to Order:** T. Kinnon called the meeting to order at 7:00pm

**Introduction of Board Members:**

**Appointment of Alternates:** David Schaeffner is appointed.

**Statement of Appeal Process:** (Read by T. Kinnon)

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 established fact; however, it should support the grounds that the Board must consider when making a determination.

The purpose of this hearing is not to gauge the sentiment of the public or to hear physical 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 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 accept the agenda as written, seconded by D. Schaeffner. Motion passed with all in favor.**

**Case #Z07-13**

**Map 60 Lot 31**

**Area Variance**

**Inez D. Morrison, Trustee**

**96 Minge Cove Road**

Application submitted by Inez D. Morrison, to request an area variance from the Town of Alton Zoning Ordinance 2007 Article 300, Section 327, Setback Requirements, to allow a deck to be constructed within the 10' required setback on the above referenced parcel within the Lakeshore Residential Zone.

**Motion made by D. Schaeffner to accept Case #Z07-13, seconded by M. Perry.  
Motion passed with all in favor.**

Stephen Hurst recused himself from the case.

S. Penney – (Planner’s Memo read into record) –  
August 1, 2007

To: ZBA Board Members

Re: Variance from setback – Map 60 Lot 31, 96 Minge Cove Road/Lakeshore Residential

From: Sharon Penney

This is a request for a variance to a 10-foot side setback dimensions for original deck construction in the Lakeshore Residential zone. The property owner intends to construct approximately 375sq. ft. of new decking (14.5w x 25 by 15.5w 25) outside a main entrance infringing on the 10-foot side setback to a distance of nine (9) feet or 90% of the setback. This is a narrow, flaring, lakefront lot at the water’s edge within a typical, densely built area and the proposed deck will be up to one foot of the abutting property line when completed.

The applicant notes that construction of the deck will eliminate “two of the three” concrete steps leading up to the main entrance and provide a safer access therein. What is height of the proposed deck that will eliminate these steps? What is the access configuration to the deck, which is not noted on the sketch?

No opposition is noted from the abutter Eleanor Apholt on Lot 32. Carolyn DiLisio is the abutter to the other side on Lot 30 and she has also registered no opposition to the construction.

The Alton Building Inspector does not recommend granting this variance to the extent of the square footage proposed as it sets a negative precedent for neighborhoods of this type-squeezing in overlarge (for the land area) attachments, which greatly violate the setback. He recommends that a smaller 150 sq. ft. area could be constructed within the setback (approximately 6x25 ft) to provide a safe egress the applicant cites in her application letter.

The planner inquires whether or not another deck of the proposed 375sq. ft. or lesser size might be located on the lakeside egress of the house within the 30 ft. setback from the lake to allow entertaining and other large capacity uses and a smaller deck for main access be built within the existing setbacks.

**Reiteration on concerns/questions:**

- 1. Height of proposed deck from the ground?**
- 2. Type of access to deck from sand walkway (# steps)**
- 3. Would spirit of zoning ordinance be better served with smaller deck size that does not violate setback line to this extent?**

**4. Could larger deck with this greater capacity be located on the lakeside of the house to allow recreational use?**

T. Kinnon – Would the applicant like to step forward and present your case?

Larry Morrison – We have a home at 96 Minge Cove Road. Apparently the Building Inspector has visited the site, is that correct?

T. Kinnon – Why don't you take a minute and read that memo.

L. Morrison – I can give you the approximate height of the deck, I think you have the photo, the steps are about 7" in height. Part of the problem is that the land slopes from the road towards the lake and as you can see in that picture there is a stoop and you have access to that from three sides. The road side there are two steps and then the east side there are three steps and if you look on the lake side it goes down actually the four steps so it is kind of an unusual situation. Originally when we bought the house there was a play area, fenced in with a swing set and at that time we had one grandchild, since then we have seven but now the youngest is over 13, so I have removed the play area and it is just sand and dirt, which isn't very appealing. In the winter the snow comes in from the lake area and blows up and I try to keep the stoop relatively open and stuff and it is a little awkward, so we would like to level that off with a deck and that would eliminate a lot of the problems that we have and of course dress up the area. I don't understand but the Building Inspector offering a compromise, you might say, with a deck area some place else our concern is to cope with that sloping area around the stoop.

T. Kinnon – I don't think it was offered as a compromise but more of a suggestion as an alternative.

S. Penney – What the suggestion was would be to make a smaller area deck that addresses the egress issues there within the setback or at least significantly smaller because it is a 90% violation and then we didn't know if you had acceptable land on the property where you could build a larger deck for you more recreational use. I realize a larger deck would be more amenable to recreation and we just need some more information.

L. Morrison – The land does drop off and the decking would help to level that. Unfortunately, the lots narrow as they go to the road and actually the home is about equal distance on both side of our property and unfortunately there is no place to go. There is now a shrubbery arrangement on the property line and I guess I disagree with the Building Inspectors comments that it would be detrimental.

T. Kinnon – It would not be in keeping with the spirit of the ordinance, mainly because one of the basic principals of the setback requirements are so that for safety reasons. If emergency personnel need to get around a structure, there is not other material there that would obstruct or cause a fire hazard or something of that sort. That is one of the general purposes of the setback is to allow an area around a structure so that emergency

personnel could be there safely. I think what the Building Inspector was trying to say was when you go that far out to the edge of the property line it does create a safety hazard and that is why he offered up the 6' wide option.

L. Morrison – We were trying to, my neighbor and I, in looking how it would affect the property line and stuff, in filing my report I requested that we could build up to 1' of the line, actually it will probably be closer to 2' but if figured if I asked for 1' that if it was 2' no one will say anything about it but if I asked for 2' and it ended up being 1' from the line it would be in violation of my request so that we are not really pushing the limit but of course that is one thing I would like you to be aware of. The house you see is only about 15' from the line or there about. I don't feel personally that it would be detrimental to the neighborhood. I don't know how to address the so-called safety.

M. Perry – How close is the house actually, this is a drawing?

L. Morrison – I would say the house is probably 16'-17'.

M. Perry – you didn't measure to give us an accurate measurement?

L. Morrison – Yes, however the property line hasn't been surveyed in many years and I would rather be on a conservative side in measuring it rather than to stretch it, but it could be 17' actually from the house to the line.

M. Perry – These types of drawings leave us up in the air and when you come in with an about figure it could be about closer, so we really don't know as a board that is why this number needs to be as accurate as possible. Did you look at other configuration for the deck, except for this particular size, placement and style because I look at what you have for area here it looks like there could be some other type of rendering for this deck.

L. Morrison – Again, if you look at that picture, which we took it shows the shrubbery on the left and we would like to cover that and the footage from the house would be about 15, in fact one of the contractors was there today and he measured it and it was 14'6" so we would be well within and possibly closer to 2' from the property line than the 1' which I asked for and might have gotten myself in a bad light by saying the 1'.

M. Perry – What I had asked is if you looked at a different rendering of the deck?

L. Morrison – We looked at and were considering for a while a brick patio, however that would be down at ground level and we would still have that stoop problem and it would go up to the rocks.

M. Perry – What I was wondering was if the deck could be narrower and come out down where you have this full piece of this land available here?

S. Penney – A different design.

M. Perry –So you would have access way out and accomplish what you are trying to do with the stairs and still have a deck.

L. Morrison – I think perhaps the drawing is a little misleading. The drawing as you look at it where it points out the main entrance and the stoop and there is a line that goes across to the left as you are looking at the picture, that is where the house itself ends, the rest of the area is a garage and the garage is up at the second floor level of the house.

M. Perry –What is on this side next to the garage?

L. Morrison –that area there is a little walkway that goes along the backside of the house and it is actually a tunnel affect.

M. Perry – It is available land space?

L. Morrison –I don't think you would want to deck that because in the area that we are talking about where it shows 11'6", there is about a 3' path and the rest of that area is filled with shrubbery, then there is a garage door under the top garage.

M. Perry – I did take a ride around the property area and I know the lots are narrow there but I didn't notice any other pieces of property that have a structure of any type within 11' of each other.

L. Morrison – From the end of the drawing

S. Penney – Mr. Morrison I just gave them the Assessor's card and it has the actual configuration, because the house I know cuts in and out.

L. Morrison –On here this is the end of a 24'x24' garage from this point you enter the garage down to the house which is about an 8' drop in 24' and then the slope isn't quite as great over here but it does drop off, so this area is not really suitable for a deck and I have all plantings in here. It is 15' and to me that is not that big of a deck.

T. Kinnon – It is not so much that the deck is 15' wide that we are looking. What we are looking at is that 9' of that is in the setback.

D. Schaeffner – Why if you have a stoop here now, why the size you are asking for to create an egress? The other thing you said that it would help you with the drifting snow. I think you are going to have a lot more snow drifting off the lake onto your deck which is going to create even more of a problem.

L. Morrison –The concrete entrance way is about 4'x5' and that is difficult to deal with in the winter with the snow and stuff. Decking this would put in and make that area level, I wouldn't have to contend with the build up. It is something that we have lived with but I am getting on in years.

D. Schaeffner – A smaller deck to shovel off onto the ground versus when you shovel a path way off of this deck , I would assume you would put stairs coming off onto the driveway, you are going to have to shovel all of your snow onto your deck. The other thing is ice issues, you are going to have safety concerns with ice build up on the deck unless you are going to throw chemical on your decking.

L. Morrison – Two things right now when I shovel that in the winter I just out the snow over to where the deck area will be and I will continue to do that. As you leave the stoop and go to the driveway you know drop down two steps and there is a brick walk in there and I shovel that out, the decking would go directly from the stoop straight to the bottom of the driveway, I wouldn't have any steps.

D. Schaeffner – Would you object if somebody put a garage up 1' from the property line when you have your deck right there?

L. Morrison – It depends what the garage is going to look like. I try to be very open-minded. I might have a problem with a wall structure going up but a flat patio or deck I wouldn't have any objection.

T. Kinnon – At this point I will open it up to the public.

Paul Apholt – I live at 94 Minge Cove Road. I am the neighbor that is directly affect by what Larry Morrison is attempting to do here. To answer the question about the garage, I have a garage but it on the other side. To answer the question about the safety factor with the deck, I have a long driveway that goes right along that property line so that if the police, fire, ambulance, and so forth what to access Mr. Morrison's house it is right there at the property line, they can come right down that, so they would not be affect by him building a deck out to the property line, which I have no objection to. I can speak for both my wife who actually owns the house and myself that we have watched Larry struggle over the number of years with the set-up and I think what is missing here is to getting it. When you drive in you are on the 2<sup>nd</sup> level and to get to the main entrance you have to go down hill. He said he hadn't had it surveyed, but I have had it surveyed because I had to put a septic system in there and it is approximately about 16'. The very narrow piece of property that goes between his front door and my property line and I have watched him struggle with it and I don't feel it will impair my property at all, I think it probably will enhance it. I won't watch him struggle with the situation that he has there and I really have no objection to it. None of the neighbors have objections to it.

T. Kinnon –We appreciate the neighbors are in favor of this. We went a little astray in the conversation earlier was trying to offer up other suggestions when we really shouldn't do that as a board. One of the things we have to do is we have a check sheet that we have to go through in order the grant or deny any variance, and one of the questions is “is there another reasonably feasible method in seeking a solution to the problem, the problem being the unevenness, an area which to make it safe in the winter time. Reasonably feasible to me would mean that if you put a 6'wx25'L deck on you are within the setback,

you have a 6' wide egress path, which is more than ample space and there is no need for a variance.

M. Perry – The other thing also is that it is not just the current abutters, it is anyone that buys property after the fact, we have to look at the rights of property owners and when these regulations are established it is to look after rights in general and the Character of the neighborhood and we know this is a small lot, but like I said before there aren't structures that are 11' apart there.

P. Apholt – I would agree with that except when you buy in the future they will see that there is a deck 1' away from the property line.

M. Perry – Every piece is unique.

P. Apholt – I think you would have to see Mr. Morrison's property because it is really unique.

T. Kinnon – What would be wrong with this type of layout, it solve all of the problems, it would be within the setback requirements.

L. Morrison – What you have (the area you shaded in there) there is an 8' drop from.

D. Schaeffner – I think the question he is asking is "Is 14' versus 6'" it seems that you are describing this as the main entrance to a house that is only going to be a main entrance to a house. You are describing this as a main entrance but it seems to be a 6' entranceway but you put deck on here into the setback. What the Code Official is explaining here is that you can have an entrance to a house that is 6' wide and satisfy the setbacks.

T. Kinnon – We can't redesign this for you, we shouldn't have even offered up any suggestions, we should have accepted this application as is.

Don Hughes – I own the property at 92 Minge Cove Road, I am here to say that we support this project and have no objection.

T. Kinnon – I will close public portion of this hearing and go into deliberations.

M. Perry – I understand where Mr. Morrison is coming from and I realize his lot is narrow but I think that with a little bit of creativity he can accomplish what he says he is setting out to accomplish and still maintain the setback.

T. Kinnon – I agree I think the Building Official made a very good recommendation 6'W I think that is more than ample space for an egress and it would accomplish the same thing and it would also allow them to do it within the zoning ordinance of the town.

D. Schaeffner – I would agree, there are ways that they can keep this within the setback and Brian is doing a good job at catching this as far as setting a precedent.

M. Perry – The variance will be contrary to the public interest in that there is an established setback requirement and this is an excessive amount and we have in the past allowed a certain small amounts for safety reasons and to accommodate the configuration of a lot but I think in this instance it would be contrary to the public interest.

T. Kinnon – I agree

D. Schaeffner – I agree

T. Kinnon – The request is not 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 is proposed, it is not in harmony with the spirit of the ordinance because the spirit of the ordinance is to maintain a buffer and certain situations where the property is unique in such that it needs to be relaxed and I don't think this is the case here.

D. Schaeffner – I agree

M. Perry – I agree, I don't think there is a safety issue here and that can't be accommodated for this gentleman with a different configuration.

D. Schaeffner – By granting the variance substantial justice will not be done, there are other means that this project could be taken on and the structure could be built within the setback.

M. Perry – I agree

T. Kinnon – I agree

M. Perry – The request will diminish the value of the surrounding properties even though there was nothing stated here, I think that infringing on a piece of property and filling up the whole property without leaving green space is detrimental to the character of the neighborhood.

T. Kinnon – My thought on the value of the surrounding properties came when the abutter made the statement that safety vehicles would be allowed to come down his driveway if need be to access the property, which would mean if he ever sold this property that portion of the property could not be built on and that particular piece could not ask for a request for variance themselves so the abutting property would be diminished in value simple because it would not be able to have the same benefit of a variance as this property.

D. Schaeffner – I agree, that it would diminish the property value.

P. Apholt – Can I make a statement?

T. Kinnon – I am sorry the public portion has been closed.

P. Apholt – I would object to what you just said since I am the abutter and you

T. Kinnon – I am sorry the public portion has been closed



D. Schaeffner – An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property and the benefits sought by the applicant can be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, it seems that the structure could be scaled down, relocated to accomplish what he would like to accomplish.

M. Perry – I think in his own words his intent was to have an area where he could come out and not have to deal with these three stairs in the winter and I think it can be accomplished so I don’t see where this variance is necessary.

T. Kinnon – I agree, I believe there are other methods reasonably feasible to obtain an egress or pathway.

T. Kinnon – Based on the above analysis, special conditions do not exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

**Motion made by T. Kinnon to deny Case #Z07-13, seconded by M. Perry. Motion passed with all in favor.**

Stephen Hurst resumes his seat on the board.

**The following case has been withdrawn by the applicant:**

**Case #Z07-12**

**Map 51 Lot 7**

**Special Exception**

**Stephen Rogers (The Bayside Inn)**

**86 NH Route 11-D**

Application submitted by Stephen Rogers to request a special exception from the Town of Alton Zoning Ordinance 2007 Article 400, Section 401, Table of Uses, Retail Business and Service, Item 25, to allow a Lodging House at the above referenced location within the Lakeshore Residential Zone. This Lodging House would be used in conjunction with the existing Bayside Inn.

**Other Business:**

**Minutes:**

April 5, 2007 – T. Kinnon and M. Perry were not present at this meeting Motion passed with 2 in favor and 2 abstentions.

April 5, 2007 – add M. Perry as absent that night, motion passed with 3 in favor and 1 abstention.

May 3, 2007 – Page 2 paragraph 4 should be T. Kinnon not M. Kinnon. Motion made by M. Perry to approve the minutes as corrected, seconded by T. Kinnon. Motion passed with all in favor.

July 5, 2007 – T. Kinnon abstained from voting because he wasn’t present. M. Perry only #5 had failed not 4 & 5 and add page numbers. D. Schaeffner change outs a trailer to puts a trailer. Motion made by D. Schaeffner to approve the minutes as corrected. Motion passed with all 3 in favor and 1 abstention.

**Old Business:**

None at this time

**New Business:**

None at this time

**Correspondence:**

1. OEP Save the date - FYI
2. Municipal Volunteer Awards Form - FYI

**Adjournment:**

**Motion made by M. Perry to adjourn at 8:04pm, seconded by T. Kinnon. Motion passed with all in favor.**

Respectfully Submitted,

Jennifer M. Fortin  
Secretary Pro-Temp