

Approved by the Board 11-15-07

**Call to Order** by Chairman, Timothy Kinnon at 7:00 p.m.

**Present:** Timothy Kinnon-Chair, Timothy Morgan, Paul Monziona, Steve Hurst, Marcella Perry, David Schaeffner-Alternate, Jennifer Fortin- Secretary, Stacey Ames-Planning Assistant, Sharon Penney-Town Planner, Carolyn Schaeffner-Recording Secretary

**Appointment of Alternates:** Not needed at this time.

**Statement of the Appeal Process**

The Chairman read a brief 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 gage 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 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.

**Approval of the Agenda:** S. Penney noted these cases have been continued on four different occasions.

<b>Case #Z07-14</b>	<b>Map 51, Lot 7</b>	<b>Variance</b>
<b>Stephen Rogers (the Bayside Inn)</b>		<b>86 NH Route 11D</b>

Requested to be continued by the applicant to the next regular meeting.

<b>Case #Z07-15</b>	<b>Map 51, Lot 7</b>	<b>Special Exception</b>
<b>Stephen Rogers (The Bayside Inn)</b>		<b>86 NH Route 11D</b>

Requested to be continued by the applicant to the next regular meeting.

**Motion** made by T. Morgan to accept the agenda as amended, seconded by P. Monziona. No discussion. Vote unanimous.

<b>Case# Z07-16</b>	<b>Map 5, Lot 72</b>	<b>Conceptual</b>
<b>Jody Persson</b>		<b>Suncook Valley Road</b>

Request submitted by applicant to discuss zoning of property located on Suncook Valley Road.

Present for this case: Jody Persson.

Here to present the concept for a motor sports park at the Coffin Brook Gravel Pit. Some documents were presented that show a concept. This would be a closed course with traffic going in one direction. We would meet all setback requirements. There is 56-acres are in a conservation easement in the front of the property. The course would sit back on the property and have buffer from neighbors. The hours of operation would be approximately 11 a.m. until dusk. The closest place currently to practice is in Maine. The property will be secured.

S. Penney noted this is an unprecedented use.

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P. Monzione asked specifically the type of motor sport.

J. Persson noted ATV, motor cross bikes, snowmobiles. Possible events, spectator area, sponsors would come in and put on the events.

M. Perry asked size of property.

J. Persson noted 98-acres with 56-acres in a conservation easement. About 20-years ago property was clear-cut.

S. Penney explained she asked Mr. Persson to come this evening for a little guidance on how to proceed.

P. Monzione stated he is uncomfortable to give an opinion that would give an impact on the decision to purchase the property.

J. Persson noted that a Purchase and Sales agreement is pending town approval and Cynthia Balcius will be surveying the property and mapping the wetlands.

T. Kinnon concerned about run-off control.

J. Persson noted this would be addressed.

M. Perry asked about attendance impact.

J. Persson approximately 50 on a weekday and average approximately under 1000 on an event day.

T. Kinnon asked if Mr. Persson has talked to people in the town about this.

J. Persson has met abutters and some outside the area and was surprised with reactions about it. Not everyone was happy about it. They are educating as they discuss it with people. Understands they would need to address the noise factor, parking, etc. We have spoken with the Chief of Police about this. We are aware of the State decibel noise limit and will work with the State on all issues. They are experimenting with this right now.

S. Penney noted that he is working with the Planning Office on his application.

**Case Z07-17**

**Map 52, Lot 31**

**Variance  
Route 11D**

**Robert & Kathleen Bielawa**

Application submitted by Melissa Guldbrandsen of Alton Law Office PLLC, on behalf of property owners Robert and Kathleen Bielawa to request a variance from the Town of Alton Zoning Ordinance 2007, Article 300, Section 327A Setback Requirements. This property is located within the Lakeshore Residential Zone.

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Present for this case: Melissa Gulbrandsen, and Robert Bielawa.

The Planners notes have been distributed to the Board. The Planner also noted she has with her tonight the Town highway department engineering plans. Issue at hand is right-of-way width and how it affects the set-back for the proposed new construction.

M. Gulbrandsen basic issue is that of setback. The property is on Route 11-D, waterfront property. There is a discrepancy between the property owners legal description in their deed and survey, depicting the width of the road. According to their information the road is 40 feet wide. The applicants were in front of the Board of Selectmen this fall with a septic issue and at that meeting the information was shared with them, that based on this road survey that the right-of-way was 50 feet wide, which contradict the applicant's legal description and deed.

S. Penney pointed out that in scaling the road width off of this actual plan it shows a right-of-way of 65 feet.

M. Gulbrandsen continued. There is certainly a lot of question as to how wide the roadway actually is. From a practical perspective, the applicant is interested in taking down the current house which is 24x26 and replacing this with a house that is 28 feet wide. They are looking to widen the house by 4 feet. In doing that they also need to comply with the set-back from the lake, in other words they need to move the house back on the lot farther away from the lake and that pushes them up against the right-of-way for 11-D. That is why the question of the width of the right-of-way is significant. If the applicant is correct in that the right-of-way is 40 feet wide, and the actual roadway is less than 40 ft., they would not need a Variance at all. M. Gulbrandsen came across a deed from 1938 from the Town of Alton to one of the predecessors in title and it is conveying all the land on the other side of Route 11-D and starts at an iron pin on the side of the existing road. It conveys in fee simple the rest of the land on the other side of the road to the owner.

S. Penney added the design standards on the most recent upgrade were spected out to 65 feet with the right-of-way. The traditional engineering standard is a 50 foot right-of-way. There are a lot of variables in this case.

T. Kinnon noted he would have a difficult time deciding on a variance or making any decision unless he knew exactly where the property line was.

M. Gulbrandsen noted there is no doubt they know where the property lines are as noted in the legal description and it starts at a pin and this pin is in the ground and depicted in a survey that is recorded.

The board discussed this issue on getting more information and talking with Town Counsel and getting this right-of-way corrected. They also feel they cannot accept the application as complete until a definitive boundary is set.

M. Gulbrandsen noted time is of the essence in getting this project started before the winter months. Property is very steep.

S. Penney encouraged that the State DOT would have more information and to research this.

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**Motion** made by T. Kinnon to not accept the application as complete, seconded by M. Perry. No discussion. Vote unanimous.

M. Guldbrandsen asked what information would make this complete.

T. Kinnon stated no discrepancy of right-of-way.

**Motion** made by P. Monziona to continue application so as to expedite the application, seconded by T. Kinnon. The motion to include the date of November 15, 2007 at 6 p.m. to expedite this application. Amendment seconded by T. Kinnon. No further discussion. Vote unanimous.

**Case #Z07-18**

**Map 2, Lot 12**

**Use Variance**

**Ali Hathaway**

**Suncook Valley Road**

Application submitted by Jennifer Haskel of Walker & Varney PC. On behalf of the applicant Ali Hathaway to request a variance from the Town of Alton Zoning Ordinance 2007, Article 500, Section 530 Variance. The property is located within the Rural Zone.

T. Morgan recused himself from this case

D. Schaeffner appointed.

S. Penney noted there is a planning memo with a rough site plan.

**Motion** made by T. Kinnon to accept the application as complete, seconded by P. Monziona. No discussion. Vote unanimous.

Present for this case: Ali Hathaway, Randy Couch and Robert Varney.

R. Varney noted they are here for a Use Variance. They stand on the written application and respond to any inquiries as to the criteria. Simplex requirements have been met. Reasonable use in the generic sense; the use of kennel in rural setting is a reasonable one. This is a reasonable use for the rural zone. Site is uniquely suitable for this activity. Noted the word Kennel or Canine is in the Town of Alton Zoning Ordinance. Noted that New Hampshire Zoning Law is it not specifically permitted it is forbidden. So they are here to establish that this use could be permitted by a Variance. Acreage is more than 50% greater than required (3.3 acres). The property is located on a first class highway. Proposal is to operate and erect a doggie daycare center (kennel). The site would be for up to 30 animals. They have reviewed some abutter concerns.

R. Couch presented plans for viewing. Building is 50x90 with 750 sq foot apartment on the end of the building for 24 hour observation. Building constructed of ICF construction (12 inch walls). Sound resistant walls. Area for 22 dogs with 8x8 foot stalls, play area in the middle 22x40. There would be a reception area with small merchandise sale area. Along the side will be a 6 ft walk-way fence. The building would be 1-story on a slab. Noted they will not be removing any more foliage or trees than necessary. Noted where parking will be directly in front of the building. Also noted concerns for neighbors will be addressed by state-of-the-art construction and operation.

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T. Kinnon asked about outside times for dogs.

A.Hathaway answered the dogs will be out during the day different times and evening set times. Nuisance dogs will be monitored. There will be 24/7 management care. We are willing to stipulate conditions for approval on outside dog use. Closest lot line is 125 feet from the proposed building. Our goal for the abutters is to not be able to see them with the 6 foot stockade fence. The building will be fire department monitored with sprinkler system in each room. Outside access for dogs is from the corridor. Each stall has a ground level window.

P. Monziona noted the Fire Chief concern with apartment wall.

R. Couch informed this wall will be a 12 inch - fire rated.

Open to public input in favor.

None seen or heard.

Closed input in favor.

Open to public in opposition

John Wheeler – owns two abutting lots to the north. Concern is what is being done with dog feces. My concern is for drainage of washing down the outside yards. There is a doggie daycare 1 mile to the south of Mr. Wheeler as well and I am located 300 yards from the other doggie daycare. That facility is not a kennel design – no overnight dogs.

A. Hathaway answered they will focus on daily removal. Storage with airtight containers. Two options: removal daily or a system installed into the ground with a non-toxic enzyme.

Michelle Sell – concern for dogs barking on Route 28 that bark all the time. I have a concern for smell, sound, type of dogs, noting concern for digging under fence. Who will be living there on-site?

R. Couch noted the stockade fence will have a section of wire fencing into the ground a couple of feet.

A.Hathaway – The on-site people will be my grandparents. There will be kennel techs, and a partner. Type of dogs - will not accept the pit-bull breed. They are not a trusted animal. Will have separate suites for aggressive dogs. Rotweiller dogs will be accepted but will be evaluated first before accepting dog. Dogs will be required to submit vet records. Smell concerns will be addressed with her two options she is considering.

Michelle Sell added her concern for a good facility that the Town can use when dogs or cats are picked up. Does not like the facility they are currently using. Would Hathaway consider being the facility to keep these dogs?

A.Hathaway open to consideration.

No further in opposition seen or heard.

Closed input for opposition.

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In favor of the application – input reopened.

Misty Couch – realtor in town. Feels there is a need for this in this town. Majority of rentals do not allow animals. Feels that the building is state of the art and feels this would be an asset to the town. This will not diminish the property value of surrounding areas.

Closed public input as no further seen or heard.

P. Monziona asked about structure will be set back or layout on the lot.

Randy couch has centered the building on the lot. You will see the facility, sign and parking lot. Fence will be seen on the side. Trees removed from leach field and play area. Our desire is to leave as many trees as possible. 25-92 play area outside. We are waiting on ZBA approval before any other approvals can be done. There is a question on room for a well. Civil engineering stated. No test pit yet.

S. Hurst concern for in-ground waste disposal system and water contamination.

Hathaway making decision after test pit done.

Closed for deliberations.

Two letters – letter from Ron and Marie Elena Husseys and Carl and Dorothy Gregoire in opposition.

P. Monziona concerns are legitimate but they do not apply for the use variance other than the property value issue. The other issues will be addresses at the Planning Board.

General discussion of issues.

Use Variance Worksheet

After reviewing the petition and after hearing all of the evidence and by taking into consideration personal knowledge of the property in question, the Town of Alton Zoning Board of Adjustment has determined the following:

<u>Criteria</u>	<u>Statement</u>
Public Interest	The variance will not be contrary to the public interest. ALL AGREE
Spirit of the Ordinance	The request is 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 it is proposed. ALL AGREE
Substantial Justice	By granting the variance, substantial justice will be done. ALL AGREE

Value of Surrounding Properties

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The request will not diminish the value of the surrounding properties.  
ALL AGREE

Hardship – Simplex

1. The zoning restriction as applied does interfere with a landowner's reasonable use of the property, considering the unique setting of the property in its environment and
  2. There is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property and
  3. The variance will not injure the public or private rights of others.
- ALL AGREE

Based on the above analysis, special conditions do exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

**Motion** made by M. Perry to approve Case Z07-18 for a Variance on Suncook Valley Road for Ali Hathaway for a dog kennel, seconded by S. Hurst. No discussion. Vote unanimous

Other Business

1. Approval of old minutes.

March 1, 2007 minutes

**Motion** made by M. Perry to approve the minutes of March 1, 2007 as corrected on the original, seconded by T. Morgan. No discussion. Vote unanimous. P. Monziona abstained.

June 7, 2007 minutes

**Motion** made by T. Kinnon to approve the minutes of June 7, 2007 as corrected on the original, seconded by T. Morgan. No discussion. Vote unanimous.

September 6, 2007 minutes

**Motion** made by M. Perry to approve the minutes of September 7, 2007 as presented, seconded by S. Hurst. No discussion. Vote unanimous.

2. New business – discussion of Rogers cases and how to proceed.

**Motion** made by T. Kinnon that any future cases that are applied to the Zoning Board of Adjustment, if the applicant requests a continuance, the cost of notification should be born by the applicant making the request for the continuation, seconded P. Monziona. Discussion. Town of Alton costs for re-notification and courtesy to abutters. What are time limits and also for this particular case. Also noted it has been the request of the applicant for a full board and the board has complied. There is a time limit to reapply. In this particular case it has been the day of the meeting that they have cancelled. Members feel that research should be done on the questions asked about continuing of cases. Time limits, costs, etc. Agreed to table this motion to the next meeting. MOTION TABLED.

3. Old business

4. Correspondence

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**Motion** made by M. Perry to adjourn, seconded by P. Monziona. No discussion. Vote unanimous.

Respectfully submitted by  
Carolyn B. Schaeffner