

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES - APPROVED
November 1, 2018, 6:00 P.M., Alton Town Hall**

CALL TO ORDER

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

Board Members Present:

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

Others Present:

John Dever, III, Code Official

APPOINTMENT OF ALTERNATES

Paul LaRochelle shared that Frank Rich, Alternate, would arrive late to the meeting. Once he arrived, he would be appointed as a full voting member.

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

Paul LaRochelle asked John Dever, III, if there were any changes to the agenda since it was posted. John Dever, III, suggested swapping the order of Cases #Z18-29 and Z18-30 so the Board could hear Z18-30 first, because Z18-29 was a Variance request and it would be based on conditions that would be set in the Special Exception.

Tim Morgan MOVED to accept the agenda as amended.

Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

DISCUSSION:

Paul LaRochelle shared that he would have to recuse himself from Cases Z18-29 and Z18-30 because he had been directly involved with speaking with Mr. Round regarding his requests.

RESCHEDULED FROM SEPTEMBER 6, 2018

Case #Z18-28 A&J Realty Trust, William K. Ashford, Trustee, Owner	16 Interlaken Road Map 63 Lot 38	Special Exception Lakeshore Residential (LR)
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A Special Exception is requested from **Article 300 Section 320A. 4., 6., & 7.** of the Zoning Ordinance to permit the replacement of an existing nonconforming structure (multiple dwellings on one 6.69 acre lot) with an increase of approximately 320 s.f. to the footprint, and an increase in ridgeline height, not to exceed 30’.

The chairman read the public notice for the record.

Present was William K. Ashford and his wife, Joanne Ashford, owners.

Paul Monzione addressed the issue of whether the application was complete. He noted that the email written to John Dever, III, from Mr. Bill Fauver advised that the Smith Point Association was a legal abutter and did not receive notice; therefore, they were objecting to the matter going forward due to that fact. One of the things for an application to be complete was to have a complete list of abutters and verification of appropriate notice to each abutter. Paul LaRochelle pointed out that John Dever, III’s, response to Mr. Fauver’s email indicated that Smith Point Association was not in fact a legal abutter. John Dever, III, stated that he had a discussion with James Sessler, Esq., Town Counsel, who confirmed that there was no requirement to notify Smith Point Association because they only had an easement to pass over the property; therefore, they were not partial owners or owners in common and were not required to be notified. John Dever, III, wanted to relay a message from Mr. Fauver that his email to him did not reflect the opinions of Smith Point Association; he was merely speaking for himself.

**Paul Monzione MOVED to accept application #Z18-28 as complete.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).**

William K. and Joanne Ashford came to the table. William K. Ashford explained that there was an old camp on their property that was deteriorating; they wanted to tear it down and rebuild another house. He stated he met with DES and they were okay with where the building would be located. Joanne Ashford stated she submitted a letter from DES stating that they had a pending approval. Tim Morgan wanted to know if there was a right-of-way situated north of the structure. William K. Ashford noted at the top of the plan there was an easement. Joanne Ashford shared that the parking lot was to the left of the yellowed out building indicated on the plan. William K. Ashford explained the layout of the right-of-way. Paul Monzione asked if the right-of-way was located on the Ashford’s property. William K. Ashford stated, yes, their property line went half way onto the right-of-way.

Paul Monzione pointed out that the current structure was non-conforming because there were three (3) dwelling structures on one lot, and because of its location in relation to the setback requirement. John Dever, III, shared that he had spoken to James Sessler, Esq., Town Counsel, several times about right-of-way setbacks and since this was not a traveled right-of-way it was considered an easement, and was not defined as a right-of-way in the Zoning Ordinances; therefore, there was no violation of a right-of-way setback for the proposed structure. John Dever, III, shared that the side property line was conforming and conformed to the closest point to the lake, which was 30’.

Paul LaRochelle noted that the front deck was being enlarged. William K. Ashford stated that Bill Evans was creating the building plans and he noted that DES allowed a 12' deck; he only wanted to build an 8' deck. Paul LaRochelle pointed out that the north corner of the deck was not within the 30' setback, but it was right on it.

Paul Monzione pointed out that Sections 6 & 7 were to voluntarily remove a non-conforming structure and replace it in kind, but their proposal exceeded the s.f. footprint and it exceeded the current height. He did not understand what regulation they were applying under and how it applied to their proposal. He asked if the house was going to be a seasonal use. William K. Ashford stated it was going to be built for a year-round use, and would have both a heating and cooling system along with well water. Paul Monzione thought that was where Section 4 came into play because it was an expansion of a non-conforming use; the use was going from seasonal to year-round.

Paul LaRochelle asked what the proposed height of the building was going to be. William K. Ashford thought it was going to be around 27' - 28' in height. Paul Monzione asked what the current height was. William K. Ashford stated the current building was about 16' - 18' in height. Paul Monzione asked if a second floor was being added. William K. Ashford stated, yes, it was for storage. Paul Monzione pointed out that Mr. Ashford was going outside the footprint, and that he was adding a deck. William K. Ashford shared that there was a deck there already, but it was a bit smaller. Paul Monzione thought there was an ordinance that pertained to someone adding on a deck. John Dever, III, stated it pertained to a structure that encroached a setback. William K. Ashford stated that originally he had a 12 pitch on the roof, but he dropped it down to a 10 pitch. He also shared that if the Board wanted him to lower it even more, he would.

Paul Monzione asked what type of foundation Mr. Ashford was using and was there going to be a basement. William K. Ashford stated he was installing a poured foundation and there was only going to be a crawl space to accommodate for a water heater and maybe a furnace, but he was not sure. John Dever, III, stated that the location they were in, he did not think Mr. Ashford could install a full foundation because it would be too far below the water table. Paul Monzione asked if the proposed structure was close to the other structures currently on the property. John Dever, III, stated that the closest structure was a garage and that was located on the other side of a brook.

Lou LaCourse asked if there was anything about this proposal that increased non-conformity. John Dever, III, stated, that the expansion of use was the reason why the Ashford's were here. Paul Monzione wanted to address Mr. Fauver's concerns that were stated in his email to John Dever, III. Paul Monzione inquired about when you looked at the right-of-way, if the edge of the building was going to stay in the same location. William K. Ashford stated the proposed building was going to be moved back a bit in order to be more compliant. Paul Monzione asked if the building was going to be moved away from the right-of-way; Mr. Ashford stated, no. Paul Monzione asked in regards to the new structure, was the footprint going any closer to the easement. William K. Ashford stated the proposed structure was about a foot and a half closer to the easement, but it would not be encroaching on any setbacks. Paul LaRochelle pointed out another concern of Mr. Fauver's, which was the septic system. Joanne Ashford stated that she submitted a copy of an approval from DES for a septic system, which was installed in 2012. Paul Monzione stated that Mr. Fauver's letter indicated that the septic system encroached on Interlaken Road, but as Mr. Ashford stated, the boundary line went half way into Interlaken Road, so there was no setback encroachment. Paul LaRochelle pointed out that Mr. Fauver's letter indicated that DES had not approved the Ashford's septic system because they were adding two (2) or more bedrooms and it would add to the septic load. William K. Ashford stated that Mr. Fauver knew nothing about his property and DES had approved their septic system. John Dever, III, stated that the system was installed and was sized to

accommodate the multiple buildings that were on the property. He noted that when the Ashford's installed their new septic system, they shared that they were going to tear down the old cottage and replace it, so it was sized for the new 2-bedroom and the other two (2) dwellings. Paul Monziona noted that Mr. Fauver's letter also talked about the Ashford's parking on the right-of-way, but that was not an issue as far as he was concerned.

Paul LaRochelle opened public input for anybody who was in favor of the applicant's request.

Barbara Stellan came to the table. She shared that her great-grandfather originally built on the property currently owned by the Ashford's and she thought it was a fabulous project. She noted that she had two (2) houses directly across from the Ashford's and she appreciated what they were doing because the current dwelling was becoming an eye sore. She hoped that their request was approved.

Paul LaRochelle opened public input for anybody who was not in favor of the applicant's request.

Sue Halterman came to the table. She shared that she lived at Lot 1-1 directly across from Interlaken Road. She stated that the Ashford's were great neighbors, but her concern was that the right-of-way was used by everyone that owned or rented slips on that dock, and she was afraid of the increased congestion because currently it was only a seasonal use and it was being turned into a year-round use. She also noted that she used the right-of-way to get to her property as well; it was a private road, but it was still a road that got an awful lot of use. The other issue she had with the increase of use was the use was going from an abandoned building to a two-bedroom house and the parking area for the people at the docks and other buildings was already tight with overflow parking on Smith Point Road. She thought that the building was in rough shape and should be torn down, but she was concerned about the increase in use on the area and the impact that would have from a safety standpoint. Paul Monziona asked if Ms. Halterman lived there year-round; she stated, no.

Paul LaRochelle closed public input.

Paul LaRochelle opened up discussion for the Board. Lou LaCourse asked whose property did the parking area belong to. William K. Ashford stated it was his own property. Paul Monziona thought that everyone would be happy to see the structure torn down after looking at the photographs.

Paul LaRochelle moved the Board onto the worksheet.

Tim Morgan stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B.

All Board members agreed.

Paul Monziona stated that the specific site **is** an appropriate location for the use. He stated that this would address Sue Halterman's concern about congestion. He thought that the fact that a 2-bedroom house already existed even though it had not been used recently, the Ashford's could have gone onto their property to use that 2-bedroom and park in their lot at any time; the fact that it had been used or not used was not a factor. Another 2-bedroom was being built in its place so he did not see a difference in use, although it was going from seasonal to year-round, but it was still a 2-bedroom home.

All Board members agreed.

Paul LaRochelle stated that factual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated that this would be a major improvement on the lot and

was the best use of the property that was in disrepair. Tim Morgan agreed that it was a compatible use. Paul Monzione agreed and thought there was a chance that property values would increase due to the improvement of abutting structures.
All Board members agreed.

Lou LaCourse stated there **is no** valid objection from abutters based on demonstrable fact. He stated that there was a concern about parking, but it was found that parking was going to be on the owner's property.
All Board members agreed.

Tim Morgan stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated that Sue Halterman brought up some valid concerns, but he did not think what the applicant proposed was going to substantially impact those concerns. He noted that under the statute, it was well within their right to make this application and to do what they proposed to do. Paul Monzione thought that all of the evidence presented to the Board regarding the septic system indicated it would accommodate for a 2-bedroom structure. He also understood that the abutters had a valid concern about increased congestion, but the fact was the structure existed and people could have been using it all along, so the fact that it would now get used was not a factor that would prohibit this use. Lou LaCourse stated there was nothing that indicated that the new structure would hinder the movement of people walking up and down the easement.
All Board members agreed.

Paul Monzione stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated that the applicant received an approval from DES regarding an appropriately sized septic system, and they had their own water supply.
All Board members agreed.

Paul LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that a new 2-bedroom septic system was installed in 2012 that was approved by DES, and they did have their own water supply; this was an adequate and safe area.
All Board members agreed.

Lou LaCourse stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that the building was preexisting and the new building was going to be expanded a bit and would be vastly improved; therefore, it met the needs of the Master Plan. Tim Morgan stated that the proposed structure was in accord with the spirit of the ordinance and Section 320 was written specifically for situations like this. Paul Monzione agreed and stated that the provisions were added and amended to encourage people to take dilapidated structures and to voluntarily be able to remove them and replace them with something much safer and better.
All Board members agreed.

**Tim Morgan MOVED to grant the Special Exception for Case #Z18-28.
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).**

Paul LaRochelle reiterated that he needed to recuse himself for Case # Z18-29 and Z18-30 because he had spoken to Mr. Round and Mr. Varney on some of issues involving this case.

Paul LaRochelle stepped down as chairman and Lou LaCourse took his place as chairman.

NEW APPLICATIONS

Case #Z18-30 Thomas W. Varney, P.E., of Varney Engineering, LLC, Agent for James H. Round, Owner	159 Mount Major Highway Map 36 Lot 25	Special Exception Residential-Commercial(RC)
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A Special Exception is requested from **Article 300 Section 320B. 2. c. and 320B. 5.** of the Zoning Ordinance to permit the expansion of a structure beyond the existing building dimensions.

The chairman read the public notice for the record.

Present was Thomas W. Varney, P.E., agent and James H. Round, owner.

Paul Monziona noted that before the Board went any further with this case, because Mr. LaRochelle had to recuse himself and the fact that Frank Rich was not present but anticipated to arrive at the meeting by 7:00 p.m., the applicant would need a unanimous decision because there were only three (3) members present to act on the application. He shared that when an incident like this occurred, the Board offered the applicant an opportunity to seek a continuance, or in this case, the applicant could wait for Frank Rich to show up; that way the applicant would have four members to act on the application. Thomas W. Varney, P.E., stated that he was going to ask the Board anyways to see if he could wait for Frank Rich. He stated he wanted to wait because he did not want to go forward with only three Board members.

Paul LaRochelle sat back at his seat and resumed the position of chairman.

Paul Monziona MOVED to proceed to Other Business, section 2. New Business, in order to wait for Frank Rich to arrive.

Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).

Case #Z18-29 Thomas W. Varney, P.E., of Varney Engineering, LLC, Agent for James H. Round, Owner	159 Mount Major Highway Map 36 Lot 25	Variance Residential-Commercial(RC)
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A Variance is requested from **Article 300 Section 327A. 2. and 320B. 5. b. & c.** of the Zoning Ordinance to permit the expansion of a building within the twenty-five (25') right-of-way setback.

OTHER BUSINESS

1. New Business:

- a. Request for a rehearing from Colchester Properties, LLC, dated October 24, 2018, in regards to their denial from the Alton ZBA on September 25, 2018.

Paul LaRochelle stated that Colchester Properties, LLC, submitted an application for another rehearing on their Administrative Appeal. Tim Morgan thought that the Board had

done their fair share already; the number of hearings and the site walk that they performed, along with permitting new evidence and new witnesses was sufficient enough. He was not convinced that this reiteration of the motion was a basis of either a mistake or illegal behavior on the part of the Board, which would warrant a rehearing.

Lou LaCourse agreed with Tim Morgan. He did not see any reason for a third “bite of the apple”. He noted that the second time the Board had listened to all of the evidence, and in his opinion, the second hearing was a rehashing of the information they heard the first time; there was nothing new and if they did have something new it should have been added at that time.

Paul LaRochelle thought that the Board had given Colchester Properties, LLC, ample enough time. The Board had them come back for a rehearing and they found no new evidence the second time; he did not see the need to rehash this issue again.

Paul Monziona agreed with everything the other Board members just stated. He added that a motion for rehearing was appropriate when the moving party could demonstrate some legal or factual basis as to why a Board should do it all over again. This would include whether the Board misapprehended some issue of fact or law, whether the Board just got something wrong, or even in circumstances where perhaps something brand new came up that they could not have presented in a prior meeting, but that had not happened. He thought that the Board did a thorough job of reviewing and understanding all of the grounds articulated to support the decision. He noted that the deed described it as a parcel, there were problems with the way in which the subdivision was laid out in terms of dashed lines being used, there was cohesiveness of use in terms of pathways and structures being ancillary to the main house, there was all kinds of evidence that would demonstrate how it was represented to governmental entities, not just the Town Assessor’s office as one parcel, but also when applications were made to the State of NH. He thought all of those things would enable the Selectmen to determine that this was a merged lot, and the ZBA also determined the same thing; he did not think this case needed to be rehashed again.

Paul Monziona MOVED to deny the motion for a rehearing on Case #Z18-18. Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).

2. Previous Business:

- a. Discussion and vote to take place on whether Steve Miller or Frank Rich (who are currently both alternates) will be voted in as the next full-voting member to fill Andrew Levasseur’s vacant seat on the Alton ZBA, as both are interested in becoming full-time.

Paul LaRochelle stated that Frank Rich had been an alternate for quite some time now and had filled in when needed, but so had Steve Miller. He noted that Frank Rich had never had the opportunity to become a full-voting member, but Steve Miller had. Paul LaRochelle stated that Steve Miller mentioned to him that he did not mind attending the meetings as an Alternate, but wanted to be assured that he would be able to vote. Paul LaRochelle thought that if Frank Rich was interested, he would like to see him be voted in as a full member if he wished to do so. Paul Monziona wanted some clarification on how Steve Miller became an alternate. John Dever, III, stated that Reuben Wentworth, Selectman, swore Steve Miller in as an alternate to sit on the Colchester Properties, LLC, case. Paul Monziona wanted to know if the alternate that did not get chosen to become a

full member would stay as an alternate if they did not get picked. John Dever, III, mentioned that Steve Miller would rather sit as a full member; he really did not want to stay as an alternate. Tim Morgan thought that Mr. Miller and Mr. Rich were both good applicants.

Paul Monziona suggested that the Board wait on a decision for this until Frank Rich showed up at the meeting. The Board moved forward to addressing # 3. Approval of Minutes on the agenda.

The Board resumed their conversation after waiting for some time for Frank Rich to arrive at the meeting. Since Frank Rich had not arrived after proceeding with the remainder of the agenda, Paul LaRochelle thought that the Board should wait to have both Frank Rich and Steve Miller present at a meeting in order for them to decide.

Tim Morgan MOVED to continue this discussion to the next regularly scheduled meeting on Thursday, December 6, 2018, in hopes that Frank Rich would be present.

Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

3. Approval of Minutes: August 2, 2018; September 6, 2018; and September 25, 2018, Special Mtg.

Tim Morgan MOVED to accept the minutes of August 2, 2018, as submitted.

Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

Tim Morgan noted that there was an error on page 15, first paragraph, line three, "impermeable" should be "permeable".

Lou LaCourse MOVED to accept the minutes of September 6, 2018, as amended.

Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).

Tim Morgan MOVED to accept the minutes of September 25, 2018, Special Meeting, as submitted.

Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

DISCUSSION:

The Board determined a brief 10-minute recess was in order to await Frank Rich's arrival.

Paul Monziona MOVED to adjourn at 7:30 p.m. for a 10-minute recess until Frank Rich arrived at the meeting.

Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).

Paul LaRochelle asked Thomas W. Varney, P.E., that since the Board was waiting for Frank Rich to arrive, and since Paul LaRochelle was going to recuse himself from Cases # Z18-29 & Z18-30, would he want to come back next month, Thursday, December 6, 2018, instead of only having three members present to decide his two cases; Thomas W. Varney, P.E., agreed to coming back next month.

Paul Monziona MOVED to continue Cases # Z18-29 & Z18-30 to the next regularly scheduled meeting on Thursday, December 6, 2018, and that there be no consequence to the

applicant.

Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).

4. Correspondence:

ADJOURNMENT

At 7:45 P.M., Paul Monzione MOVED to adjourn.

Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).

Respectfully submitted,

Jessica A. Call
Recording Secretary