

APPROVED by ZBA March 1, 2007

Call to order at 7:05 p.m. by Vice Chairman Timothy Kinnon.

Statement of Appeal Process

The Vice 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 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 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.

Introduction of Board Members Timothy Kinnon-Vice Chairman, Timothy Morgan, Paul Monzione, Stephen Hurst, David Schaeffner-Alternate, Pam McLeod-Alternate, Monica Jerkins-Planning Assistant, Carolyn Schaeffner-Recording Secretary

Appointment of Alternates David Schaeffner appointed for Case Z06-34.

Approval of Agenda – Motion by T.Kinnon to approve the agenda as presented. Second by P. Monzione. No discussion. Vote unanimous.

Case Z06-34

Map 65, Lot 17

Special Exception

Bernard Lynch

1702 Mount Major Highway

Application submitted by Thomas Varney on behalf of Bernard Lynch to request a Special Exception from the Town of Alton Zoning Ordinance 2006, Article 300, Section 320(A-4) – Expansion of Use – to allow the placement of a railroad station building to be relocated and placed on an existing foundation in a non-conforming campground within the Lakeshore Residential Zone.

Planner Comments: Town record unclear of existence of campground. 1988 Planning Board determined the use classified as a seasonal campground and not a mobile home park. The Board further stated that any proposed changes from campground to mobile home park would require a variance from the Board of Adjustment. In December 1988 the ZBA upheld the definition of the campground use on this parcel. In 1990 the Belknap County Superior Court upheld the determinations by both Boards that the use was classified as a seasonal campground. In 1997 a trailer was ordered removed from the site that did not comply with the definition for travel trailer parks commonly found in campgrounds. In administrative appeal to the ZBA followed but the decision of the Building Inspector was upheld. A motion for rehearing was denied and no other applications were found in the record. No waivers requested, however, in staff review of the plat indicated that soils and wetlands have not been delineated. Since the applicant proposes to place a structure on an existing foundation there should be no additional impact to the land. If this is the case then the soils and wetlands information should not be necessary for the Board to make a determination. If the Board feels that this information should be provided then the application cannot be accepted as complete. The application proposes to relocate an existing structure, the historic railroad building, from a site approximately 1200 feet down the road to a place on top of an existing foundation at the campground. This building will be used as a recreational

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building for the campground. Since the campground is an existing non-conforming use, the expansion requires a special exception. If the Board grants the special exception, the applicant will have to go to the Planning Board for a site plan review.

Motion by D. Schaeffner to accept the application for case Z06-34. Second by P. Monziona. No discussion. Vote unanimous.

Present for this case: Bernard Lynch and Tom Varney.

T. Varney read the narrative provided with the application. Lynch plans to install and continue its use as a recreation building. Letter sent to 45 abutters. Have 20 responses with no objections. Noted that if the building is not moved it will be demolished as the current owner has other plans for his property.

B. Lynch would like to save this building. Strictly using this building for recreation and administration.

P. Monziona noted a number of letters in objection to this. One of the individuals that is a client of his. Requests to be recused.

Pam McLeod is appointed for this case.

T. Morgan asked about the removal of the bedroom inside.

T. Varney interior changes only to bring additional rooms inside back to original "waiting rooms".

T. Morgan asked about history of this building.

T. Varney noted used since 1840s.

T. Morgan noted to applicant regarding the abutter objections. 1. Noting the building not classified as historical.

B. Lynch stated it is a matter of process and has not been registered but it is of historical value.

T. Varney and B. Lynch addressed issues.

1. Non-conforming issue. This is non-conforming use. Seasonal campground.
2. Property classified as seasonal. This will not be used as a home. No persons live there year-round. Used as recreational only. Noted Mr. Lynch is a new owner and has improved the grounds.
3. Construction and excavation equipment. Equipment is used for repairing water lines, sewer problems. Use is not excessive but is necessary.
4. Selling of used automobiles or sell picnic tables. This was done infrequently when someone asked to place something for sale. Does not feel this was excessive. Has one elderly gentlemen makes picnic tables and has been given permission by Mr. Lynch to place by the road. He probably has only sold 5 during the season.
5. Quiet and enjoy lakeshore. Use of building will be used only as a recreational hall and office.

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6. Not classified as a historic building. Noted above.

D. Schaeffner asked why has a building never been built on the foundation.

B. Lynch this was already there when he bought the property and does not know original reasons why this was not finished. If this building is not put on the foundation, the flooring will need to be replaced anyway.

D. Schaeffner asked if he is willing to have the building put on the historical register.

B. Lynch yes.

T. Kinnon asked how long he has owned the property and did he know the owner and putting a building on the foundation will be non-conforming.

B. Lynch stated he has owned the property six years and did not know the previous owner.

P. McLeod asked for the abutter letters to be submitted to the Planning Assistant.

Open to public input in favor.

Michael Danvash owner of the railroad station. Owned property for five years. Ticket room still inside, original wood inside. Has had a lot of railroad buffs stop by. He is giving this building to Mr. Lynch as Mr. Lynch will incur significant costs to move this building and would like to keep historical value.

Open to public in opposition.

Richard Cunningham, 88 Railroad Avenue, residents for 12 years full time. Part time since 1940. Admires railroad station. Does not have objections perse. Difficulty with this is pride in property. Feels the current owner of the park is not a good neighbor. Does not feel campers in place are seasonal. Does not know of any campers there that are registered. Using the property as a construction location. Feels he is not conforming to Ordinances of seasonal parks. Has a police dog that is left unleashed. Has suspicions that this building will be used for construction business, and party deck. Has been asked to put up buffers from close residential properties and has not done so. At the lower end of lot has a lot of water. Agent for two neighbors that are opposed.

M. Jerkins noted letters that were submitted and one with pictures.

Abuttal from T. Varney regarding number of sites. Was approved for 30 sites in 2001. (Distributed certification for review by the board). Noted that most campgrounds have a central building and this one does not. That is the reason for adding the building.

Closed public hearing and board went to deliberations.

Board Discussion.

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P. McLeod feels the saving of the building is important and will improve the site.

T. Kinnon feels the same and acknowledged the concerns and does feel they are valid but can only make the decision on the building itself. Does feel it will enhance the neighborhood.

T. Morgan does agree with valid concerns and knows the planning board can address these concerns. Does agree it will add value to the property.

S. Hurst does feel this will improve the property.

D. Schaeffner agrees and feels it should be a stipulation that it be registered as a historical building.

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 as follows:

1. A plat has been accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made. **All agree.**
2. The specific site is an appropriate location for the use. **All agree.**
3. Factual evidence is not found that the property values in the district will be reduced due to incompatible uses. **All agree.**
4. There is valid objection from abutters based on demonstrable fact. **All agree.**
5. There is undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. **All agree.**
6. Adequate and appropriate facilities and utilities will be provided to insure proper operation of the proposed use or structure. **All agree.**
7. There is adequate area for safe and sanitary sewage disposal and water supply. **All agree.**
8. The proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. **All agree.**

Recommendations to the Planning Board.

Recommend building apply for registration on the historical register.

Hours of operation to according to the town of Alton Noise Ordinance with a closing by 10 p.m.

Motion by T. Morgan to approve case Z06-34 with stipulations listed above to the Planning Board. Second by P. McLeod No discussion. Vote unanimous.

Board took a brief recess at 8:10 p.m.

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Board reconvened at 8:15 p.m.

Case Z06-35

Map 39, Lot 30

Variance

Robert Travers

38 Lionell Terrace

Application submitted by Robert Travers to request a variance from the Town of Alton Zoning Ordinance 2006, Article 300, Section 327(A1) – Setback Requirements - to allow a porch to be increased in size within the 30' setback requirement. The property is located within the Lakeshore Residential Zone.

Planner Comments and history: no prior applications, no waivers. Applicant began building porch, was issued a cease work order and instructed the applicant that a variance would be needed to proceed. Applicant states just replacing porch that extended six feet from the structure. Since the porch was taken off prior to obtaining a building permit, and the record is not clear as to the existence and or size of the porch, it is difficult to determine what size variance the applicant actually needs. The applicant argues that an additional two feet variance is need since the porch is eight feet now instead of the original six feet. The applicant must meet the burden of proof with regard to the size of the previous existing porch. Since town records are not clear on this subject staff has recommended that the applicant supply photos, aerials, or any other record he can find to help support his position. Planning Assistance has a very small photo showing pre-existing porch.

Pam McLeod is appointed for this case as alternate.

Motion by P. Monziona to accept the application for case Z06-35. Second by S. Hurst. No discussion. Vote unanimous.

Robert Travers present for this case.

R. Travers noted a small project that has become a big ordeal. Began by just replacing boards. Looking for 2 foot extension. Originally was going to replace with 6 ft boards and was recommended by lumberyard salesman to use 8 ft due to minimal cost difference. Felt this was a mistake. Assumed he was just replacing what was there.

P. Monziona asked how much of the entire porch extends into the 50 ft setback.

R Travers stated the porch is approximately 30 ft from the water.

P. Monziona asked is the original was enclosed with screens.

R. Travers confirmed yes.

S. Hurst asked about abutter on that side.

R. Travers stated his abutter is in agreement and sent a letter.

Open to public in favor

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Lou Popilo, abutter. Noted porch was in need of much repair and or replacement.

Open to public in opposition.

None seen or heard. Public hearing closed.

Motion by Monziona that the application as presented deal with the 2 ft. Second by Morgan. No discussion. Vote unanimous.

Board discussion – honest mistake on the part of the applicant, enhances the building and abutters are in favor.

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:

Criteria	Statement
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	The request will not diminish the value of the surrounding properties. All agree.
Hardship – Simplex	<ol style="list-style-type: none">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 and2. There is a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property and3. The variance will not injure the public or private rights of others. All agree.

Summary statement (no vote needed):

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

Motion by T. Kinnon to approve case Z06-35. Second by S. Hurst. No discussion. Vote unanimous.

OTHER BUSINESS:

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1. Approval of Minutes: January 23, 2006; October 5, 2006
January 23, 2006 – table the approval of the minutes to the next regular meeting.

Motion by T. Morgan table the approval of the minutes of January 23, 2006 to the next regular meeting due to the fact there are only two members that are present tonight that we present at the January 23, 2006 meeting. Second by T. Kinnon. No discussion. Vote unanimous.

October 5, 2006

Motion by P. Monziona to approve the minutes for October 5, 2006 with changes marked on original by Planning Assistant and subject to verification of “Attorney Roy”. Second by T. Kinnon. No discussion. Vote unanimous.

2. Old Business: Gillan: Motion for Rehearing

Submitted by Attorney Hoover on behalf of David and Steve Parker.

T. Kinnon noted his conflict of interest with regard to his previous electrical business in Alton. Does not feel there is nor will there be any conflict of interest.

T. Morgan recused himself.

P. Monziona recused himself.

Pam McLeod and David Schaeffner appointed for this case.

M. Jerkins noted if the Board decides to hear this motion it will be assigned a case number and a date. If the Board decides not to hear the motion then it will fail.

T. Kinnon suggests to look at new materials and decide if a motion for rehearing is valid.

Discussion on what has been presented with motion.

P. McLeod feels T. Kinnon's recusal is a gray area but feels it important.

T. Kinnon discussed his conflict of interest with Town Counsel and he felt this was fine.

Discussion of reasons submitted for motion for rehearing.

Conflict of interest – not substantial.

Inconsistencies with the Board. - Reasons stated not a good comparison. Totally different case.

Incorrect application of hardship. - No new evidence. Board members feel it is nitpicking,
feels they have discussed and deliberated this issue.

Citing irrelevant precedent. - Feels this is Attorney Hoover’s opinion and there are no new facts.

Board’s decision is unreasonable. - The type of retail has been discussed and this is not new information.

Suggestion from Attorney Hoover for a more reasonable and balanced decision with respect to this issue is

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available to the Zoning Board. Suggested the Board conduct a rehearing based on the reasons in the Motion and that the Parker's request that the Board consider reducing the required parking spaces from 39 to 25 from May 1 through September 30. And from 39 to 11 from November 1 through April 30.

Board agreed no new evidence presented. Encourage these issues to be presented to the Planning Board.

Motion by T. Kinnon to deny the request for rehearing. Second by P. McLeod. No discussion. Vote unanimous.

3. New Business: Question on the school sign. Request of the school Board for application fee but not sure about their request to waive the abutter notifications. T. Morgan asked about any rules for waiving fees for governmental entities. General discussion of waiving of permit fee. S. Hurst suggested asked for a written request from the School Board.

T. Kinnon suggested the ZBA have a workshop on Board procedures.

Motion by P. Monziona that upon written request by the School Board the ZBA would agree to waive the application fee for the application for the sign but not the abutter fee. Second by T. Morgan. Vote unanimous.

4. Correspondence: None

Motion by T. Morgan to adjourn. Second by P. Monziona. No discussion. Vote unanimous.

Respectfully submitted,
Carolyn Schaeffner, Recording Secretary