

Members Present: Timothy Morgan, Lyndon Avery, Vice Chairman Marcella Perry, Keith Chamberlain, Angela Bystrack, Timothy Kinnon, Alternate.

Others Present: Planner Kathy Menici; Secretary Carolyn Schaeffner and Nancy Pritchard, and Attorney Bernie Waugh.

**Call to Order: Marcella Perry, Vice Chairman** called the meeting to order at 6:00 p.m.

A **Motion to Disqualify ZBA Member** was distributed to Board members and Vice Chairman referred to Attorney Waugh who distributed letters from two attorneys.

**Motion to Disqualify ZBA Member**

Now comes the Alton Board of Selectmen pursuant to R.S.A. 673:14 and moves to disqualify Zoning Board Member Keith Chamberlain and in support thereof states as follows:

1. R.S.A. 673:14 provides that no member of the Zoning Board of Adjustment shall participate in deciding or shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in an action of law.
2. This case is a matter being decided by the Zoning Board of Adjustment in its judicial capacity.
3. R.S.A. 500-A:12 established statutory juror standards which if answered in the affirmative would disqualify a juror as being not indifferent to the matter being tried. Those standards are as follows:
  - A: Expects to gain or lose upon the disposition of the case;
  - B. Is related to either party;
  - C. Has advised or assisted either party;
  - D. Has directly or indirectly given his opinion or has formed an opinion;
  - E. Is employed by or employs any party in the case;
  - F. Is prejudiced to any degree regarding the case; or
  - G. Employs any other council appearing in the case in any action then pending in the court.
4. On information and belief member Keith Chamberlain has personally contacted at least one other member of the Zoning Board of Adjustment outside of any public meeting or hearing involving this specific case and has expressed his opinion that the Town Planner has withheld information in this case thereby attacking the Planner's truthfulness and veracity relative to important issues involving this case. This contact violates the juror standard in that Mr. Chamberlain has directly given his opinion or has formed his opinion as to the truthfulness and veracity of an administrative officer of the Town who has and will provide important information of facts involved in this case. By doing so Member Chamberlain has clearly indicated his prejudice regarding important issues of this case.

5. Keith Chamberlain by his actions is not indifferent to the outcome of this matter.
6. Further, if Mr. Chamberlain had contacted more than one member outside of the public hearings and meetings in this case he has violated the provisions of R.S.A. 91-A known as the New Hampshire To Know Law by having contact with a quorum of the Board. This conduct is contrary to law, contrary to town policy and contrary to general concepts of fairness in prosecuting this case.
7. For the following reasons, Mr. Chamberlain should be disqualified to participate in this case.

Respectfully submitted the Alton Board of Selectmen.

This 3<sup>rd</sup> day of November, 2005.

(Please note this motion was signed by 4 Selectmen.)

Attorney Waugh: The top is from Mary Tenn, attorney for Mr. Bahre and the gist of it that she wrote to Jim Sessler saying she thought the Board did not have any jurisdiction any more over this Motion for Rehearing because it has gone beyond the thirty (30) days. The second letter is from Mark Puffer and he is now apparently representing the Selectman in this matter, Mr. Sessler having disqualified himself. Mr. Puffer is responding to the first letter stating in his opinion the Board does still have jurisdiction and I did talk to your Vice Chair about this and I also talked to both of the attorneys about this and I'll just repeat to everybody what I said to them which was that I think the Board does still have jurisdiction for three reasons. 1. Being that you did meet during the thirty (30) days and you decided to put the matter under advisement and go to your counsel. There is a good argument that the statute does allow that. It says that the one option that the Board has during the thirty (30) days is to suspend the decision pending further consideration. I think arguably you have done that. The second reason is that this case which Mr. Puffer cites in his letter Barry v. Town of Amherst which doesn't deal with this statute but does deal with another thirty (30) day deadline and where the Board failed to act and the conclusion of the Supreme Court was that even though there is a thirty (30) day deadline there is nothing in the statute that says that anything automatic happens if you don't meet the thirty (30) days and therefore nothing does. So based on both of those and my third reason, I guess, is that even if I'm wrong it doesn't make any sense to me for you to assume that you do not have jurisdiction because that would stymie everything. I think you have got to go ahead and act and this point on this Motion for Reconsideration. So that is my advice and that is the gist of these letters.

M. Perry: Thank you.

T. Morgan: Madam Chairman, I am going to recuse myself at this point.

M. Perry: Tim, I would like to ask you a question. Your relationship to the case, you sat in on the meeting of the 17th, what happened between then and now?

T. Morgan: I guess I should have recused myself at that time.

M. Perry: Okay, so there was a relationship before that time.

T. Morgan: That is correct.

M. Perry: Okay, thank you very much. Okay, in that case I will appoint Alternate, Timothy Kinnon to sit in for Timothy Morgan. To continue on with the Motion to Disqualify ZBA Member, now that everyone has a copy of the motion, I guess this decision lies with the member to decide whether these are valid and I do have some questions, I don't know if anyone else does, but I feel that this is a valid motion and that it needs to be addressed.

K. Chamberlain: I would like to take the opportunity at this time to address

T. Kinnon: Excuse me, I would like just 5 minutes to read this, before we talk about it.

M. Perry: Certainly, Tim. (6:10 p.m.)

(At this time there was discussion between Chairman Perry, Attorney Waugh and a public attendee with regard to obtaining a copy of the Motion to Disqualify ZBA member. There was discussion as to whether the document was public record and Attorney Waugh assured that it was and therefore, copies were made available at that time.)

T. Kinnon: (6:14 p.m.) I'm actually all set.

M. Perry: You are, we will wait for Kathy to come back so that they can have copies. They don't have input but so that they have a copy of what is being discussed.

M. Perry: In light of the Motion to Disqualify ZBA Member, I think we have all had an opportunity to read this and the Board member has the option to step down, or the Board members have the option also to ask the Board member to step down. So you would like to comment, Keith.

K. Chamberlain: I certainly do. On the Motion to Disqualify ZBA Member for the Bahre cases, Z05-36 and Z05-37 it specifically states on number 4 and I will read it in its entirety:

4. On information and belief member Keith Chamberlain has personally contacted at least one other member of the Zoning Board of Adjustment outside of any public meeting or hearing involving this specific case and has expressed his opinion that the Town Planner has withheld information in this case thereby attacking the Planner's truthfulness and veracity relative to important issues involving this case. This contact violates the juror standard in that Mr. Chamberlain has directly given his opinion or has formed his opinion as to the truthfulness and veracity of an administrative officer of the Town who has and will provide important information of facts involved in this case. By doing so Member Chamberlain has clearly indicated his prejudice regarding important issues of this case.

I want to refute that and the reasons why are this: That on October 24, this ZBA met with attorney Waugh for the first time in this room in the Town Hall. The first thing we were handed at that meeting was this document from Ten and Ten that was dated October 24, 2005.

Attorney Waugh.: Madam Chair, I am sorry but if Mr. Chamberlain is going to reveal a conversation that was legal advice that I gave to the Board is privileged information.

K. Chamberlain: Nope, this has nothing to do with legal advice. This is a matter of record, correct?

Attorney Waugh: That letter?

K. Chamberlain: Yes.

Attorney Waugh: Yes.

K. Chamberlain: Thanks. It was at that meeting that I read this letter and I will refer specifically to number 8 and in my defense I will state that you can read on the front of this document now, ask Kathy Menici if this document has been entered into the file. If not, ask the Board if they think it should be. Raise the concern that the Alton ZBA was never notified of the Motion by Selectmen to Continue the October 6 hearing to a future date. And I will specifically refer again to item number 8 in the same document that I just mentioned. I will read it in its entirety and it says:

In its cover letter to the Chairman of the ZBA, dated September 28, 2005, the Board of Selectmen requested that the ZBA delay consideration of the Motion to Reconsider until all of the original voting members of the ZBA could be present and participate. This was an election by the Board of Selectmen to have the Motion to Reconsider judged only by people who were present at the original hearing on September 1, 2005.

It was at that meeting when I read that, that I first realized this document alluded to a number 8 was never given to the Alton Zoning Board of Adjustment for whatever reason. I would also like to bring up in my defense that I brought this issue up in front of this Board that night about that and there was talk about amongst ever member of this Board, cause I don't speak quietly and they know that I mentioned it, and I was troubled by the fact, and Mr. Kinnon has eluded before why we didn't get information on this rehearing in adequate time for the October 6<sup>th</sup> hearing, which is typically how you handle a rehearing, you schedule it for the next regularly scheduled ZBA meeting. So, what the Selectmen are asking me to do is they are saying that I singularly spoken to another member of the ZBA about this information, when in truth, I have spoken to every member of the ZBA about this. So therefore, I feel I will not step down.

M. Perry: Did you make a phone call to an individual on the Board, Keith? Did you make a phone call regarding this particular case in regards to information.

K. Chamberlain: No, not that I recall. Other than speaking to this Board about this.

T. Kinnon: Excuse me, did somebody tell you that Mr. Chamberlain made a phone call to somebody?

M. Perry: I understand that there has been conversation.

T. Kinnon: Then whoever told you that Mr. Chamberlain made a phone call needs to step up here and state their name and state that for the record otherwise its hearsay. I don't believe any information should be coming on to record through another party.

M. Perry: Yes.

A. Bystrack: I believe at the last meeting that we had Mr. Chamberlain said that he had called me and Tim (Kinnon) to notify us that we were missing information and that it might be in our interest to take a ride by board to view the property from the lake.

M. Perry: So contacting two members.

K. Chamberlain: Excuse me.

M. Perry: No, just a second Keith, contacting two members outside of notifying the Planner ahead of time, constitutes a meeting.

T. Kinnon: I don't have a particular problem with a ZBA member informing me of information that I did not receive. Otherwise, how are we going to find out about information that isn't disseminated to us.

Attorney Waugh: Madam Chair. I guess at this point I would do more than offer, I would recommend that you meet with me to talk about this.

M. Perry: Yes, Okay.

K. Chamberlain: I would like to respond first.

M. Perry: No, Keith. We are going to adjourn and we are going to meet with our attorney. Okay.

T. Kinnon: That needs to be taken to a vote first.

M. Perry: We are going to adjourn and take it up with our attorney.

T. Kinnon: I feel that the people of this town need to hear what's going on with the ZBA and the Board of Selectmen everything needs to be in public.

M. Perry: That's fine, Tim but I think we need to. . .

K. Chamberlain: And I think your right and a motion should be made if that was the case and if not I would like to respond.

T. Kinnon: A motion needs to be made.

**M. Perry: I am making a motion that we convene for a short period of time with our attorney to consult with our attorney before we get further into this. The motion was seconded by Angela Bystrack. The motion was carried with all in favor.**

At this time (6:23 p.m.) the Board left the meeting room to meet with Attorney Waugh.

6:30 p.m. M. Perry: I think we are ready to continue on. I'll let Keith address this and then we can get on with this case.

K. Chamberlain: I would like to address what was said by Angie Bystrack before we took a recess with the attorney, that I made a phone call to her and I will explain the content of that phone call, but I also want to state that I called Mr. Kinnon, Mr. Avery, and Mr. Morgan as well, each individually and again I have written on the back of this document, some time ago, on the Selectmen's Motion to Reconsider. I believe I was at the last meeting, October 17 when the two new members Bystrack and Morgan had been appointed to the Board to hear this case. From the comments made by both of those members, I alluded to the fact that they didn't have the information and consequently all the information to hear the Bahre case properly. I know what it took for me to get verbatim minutes from the Town Planner, we had to walk up to Russ Bailey's office in order to get his permission for verbatim minutes of the Bahre case to be released to me. After the October 17<sup>th</sup> meeting I called each of the members, and I have a list here that I wrote and at the heading it says get: and it's just a general list that I felt each, to give Mr. Bahre the fairest hearing possible, that they should get the verbatim minutes for all board members for case Z05-23, Z05-24, all books pertaining to the ZBA, the New Hampshire Planning and Land Use Regulation, the ZBA of New Hampshire Handbook, OSHA and Symplex Case Law, ZBA By-Laws and Master Plan, the Alton New Hampshire Zoning Regulations, March 9, 2004 Edition and those were the issues that I discussed with the members. None of those issues were case specific. If anything it was to give what I consider a fair hearing to Mr. Bahre once again. I also mentioned to the members that it had been policy for the ZBA members, when they needed to go out and look at a piece of property, that if they wanted to go with the Building Official, basically the boat was at our disposal to see island properties or properties on the water where you didn't want to trapes through people's yards. It certainly makes a better way to handle things instead of trespassing on to people's property to see it by boat if it's on the lakeshore or an island. I was refuse, apparently, when I mentioned that to Ms. Bystrack to get her up to speed for the Bahre case to see the properties in that neighborhood, typically when we look at use variances neighborhood criteria falls into play. It has in the past, we look at the neighborhood to consider what the neighborhood looks like in order to make our decision. Don't tap your fingers and just wait a minute and let me finish please.

M. Perry: Yeah, well I don't this has direct . . .

K. Chamberlain: Don't interrupt.

M. Perry: Excuse me, Keith, but I think that doesn't have relevance to this . . .

K. Chamberlain: let me finish up, if you would.

M. Perry: No, go ahead, Tim.

K. Chamberlain: I was refused . . .

M. Perry: Tim, go ahead.

T. Kinnon: My question was actually, who refused usage of the boat to view the property.

K. Chamberlain: Angie Bystrack was refused by the Town Planner, again, which I consider frustrating the process to give this case a fair hearing.

K. Menici: That's not true.

K. Chamberlain: She can respond. She called be back and spoke again and told me that.

M. Perry: Angie.

A. Bystrack: I believe it was Brian that said that, that was not usually the case, that ZBA member didn't go out by boat to view properties, not the Town Planner.

M. Perry: Alright, I have a question, Angie, it seems that Keith had contact all of the members here except myself. You had spoken to the Town Planner of your concern with the conversation and I think that's why we are where we are at. You had a concern about not so much specifically the case but the implication that the Town Planner was doing this intentionally, and that was the concern.

A. Bystrack: Yes, cause he felt that it was done on purpose, that I wasn't given specific information.

M. Perry: Okay.

K. Chamberlain: I'll respond to that. That's not how I remember the conversation. My conversation with Angie Bystrack and everybody else was to secure all the information necessary in order to hand down a fair decision in this case. The only person that can hand that out to you is the Town Planner and the Planning Department because that is where everything funnels into whether it's the Motion to Reconsider from the Selectmen, or whether it's Applicants coming to this Board of Adjustment.

M. Perry: Okay, we going to get on with this. Keith, . . .

T. Kinnon: May I ask one last question.

M. Perry: Okay, go ahead Tim.

T. Kinnon: Angie, do you feel that Mr. Chamberlain tried to influence your opinion on this case in any way?

A. Bystrack: I don't believe he was trying to influence my opinion on this particular case. He had stated that he felt the case was trying to be sabotaged and that was my concern in trying to protect the integrity for the applicant's behalf and fairness.

K. Chamberlain: I have nothing to say in my defense and I would like to ask my board members to decide whether they feel I am prejudiced or whether I should step down for what ever reason.

M. Perry: I think you made it clear that you are not going to or are you going to step down?

K. Chamberlain: I would ask my Board members for a vote. I would like their opinion.

L. Avery: I don't believe Keith has done anything to step down in this case for us.

T. Kinnon: I don't either. Angie said she doesn't feel that he tried to influence her in this case. I know he didn't try to influence my opinion in this case.

M. Perry: The only concern is that I have he called all four (4) members. That's a concern, but I think we can get on with this case without Keith stepping down.

POINT OF ORDER from Public Attendee – I think that if one person has to step down everybody that engaged in conversation has to step down.

M. Perry: I am sorry but you are not allowed to speak. It's not open to the public.

K. Chamberlain: Madam Chairman.

M. Perry: Okay, Case Number Z05-

Attorney Waugh: Madam Chair.

M. Perry: Yes

Attorney Waugh: There also has been a suggestion that Ms. Bystrack should be disqualified because she was appointed to the Board by the Board of Selectmen who is a party to this case. I think some mention should be made on the record of that.

M. Perry: Okay, Angie when you were interviewed by the Selectmen could you just give us any indication whether they spoke about any case in particular.

A. Bystrack: I was approached to join not only the ZBA but also the School Board. I made this clear in the beginning I had chosen this board. No case was discussed in any regard and I want to be able to clarify the concerns of the attorney, Mary Elizabeth Ten, if I may. On the October 24<sup>th</sup> correspondence that was hand delivered on the objection to participation of newly appointed Zoning Board of Adjustment members, on page 4, all the way at the bottom when it says under "B". "Despite not having been present at the September 1, 2005 hearing, newly appointed ZBA member Timothy Morgan stated that he agreed with acting Chairman Perry, that on September 1, 2005 the ZBA had not sufficiently considered the definition of the term recreational use as not-for-profit or whether the Bahre's applications met necessary legal test to be granted and newly appointed member Angela Bystrack said that she wanted to hear evidence and definitions." The first thing I had stated when we were going to vote was that I had not read the entire case and I didn't realize that the ZBA had already



made a decision and that we were not continuing but actually rehearing the case and I wanted to be fair to the application in making sure that I had read all the information. I also want to make it clear that I took an oath that I take very seriously that I would not be prejudice or would recuse myself. I have not been by any individual or group of individuals intimidate or swayed in any decision.

M. Perry: Okay, thank you.

K. Chamberlain: Can I ask Angela Bystrack a question. I am not sure if she answered or not. Did you submit your letter of consideration of the Selectmen by yourself, without anybody asking you, or did someone ask you to join the Board of Adjustment.

A. Bystrack: I submitted it myself.

K. Chamberlain: Obviously, you had heard or read somewhere that we were looking for applicants.

A. Bystrack: Yes. So was the School Board.

K. Chamberlain: I also want to ask one more question, Madam Chairman. At that time did you have the verbatim minutes of the case? Wasn't it after the October 17<sup>th</sup> meeting that you and I discussed getting the verbatim minutes?

A. Bystrack: I hadn't had the verbatim minutes.

K. Chamberlain: Okay.

M. Perry: Okay, Kathy, would you read the case into . . .

K. Chamberlain: Madam Chairman. POINT OF ORDER before you start this case. We don't have a chairman. You are just acting Vice Chairman. We have a resignation of Richard Quindley.

M. Perry: At this point in time we are going to take on the cases as they are. This is on the agenda Keith . . .

K. Chamberlain: We can amend the agenda, Madam Chairman.

M. Perry: This is on the agenda and . . .

K. Chamberlain: Electing officers should be done prior to the hearing and not at the end of the meeting and I think the Board should vote on that.

M. Perry: This is on the agenda. . . .

K. Chamberlain: Otherwise I think its Board stacking again.

T. Kinnon: I feel that because we have a case on-going and the present acting chairman has been acting chairman for several of these meetings now, I feel that . . .

K. Chamberlain: I was acting chairman for the October 17<sup>th</sup> . . . .

T. Kinnon: Let me finish. I feel that the continuity of this Board is crucial to this case. I do not feel that we should be changing roles now.

K. Chamberlain: Well, if you recall, Mr. Kinnon, Marcella Perry was absent the second hearing for the Motion to reconsider. I was the acting chairman that night. She was on vacation. Marcella Perry was the vice chairman when we had the first case come in front of this Board and Dick Quindley was still acting chairman then. So if anybody has had a higher position and a higher calling to this Board, it was me.

M. Perry: Right at this point in time we are going to continue until . . .

**K. Chamberlain: Before you do I'm going to make a motion that we amend the agenda to elect officers prior to hearing any case tonight.**

M. Perry: Do I have a second. {Pause} No second noted. Continue on.

K. Menici: The first  
Case Z05-36                      Map 25, Lot 5-6,                      Motion for Rehearing  
Robert and Sandra Bahre                      Hopewell Road  
Application submitted by Alton Board of Selectmen for a Rehearing on Case #Z05-23 regarding the  
September 1, 2005, ZBA decision granting the property owners request for an Administrative Appeal  
to overturn the decision of the Building Inspector and allow the issuance of a building permit in order  
to construct a building to store the property owner's antique and collectible automobile collection.  
Continued from the October 17, 2005, meeting.

M. Perry: Okay in the case of, and I'm going to open this up to the Board for discussion on the case of the Selectmen. This is [delivered of session], I going to take comments from the Board. Tim do you have. . .

K. Chamberlain: Did you even start the meeting properly discussing the merits of the case. Typically, we have a little. . We need to do that introductory statement.

M. Perry: I think Kathy read the case and what the case is about.

K. Chamberlain: Well, not that, Madam Chairman.

M. Perry: Tim?

K. Chamberlain: This document, typically, the Zoning Board of Adjustment, the purpose of the appeal process.

M. Perry: I can do that. Read some statement of the appeal process. The purpose of this hearing is to allow anyone concerning with an appeal to the Board of Adjustment to present evidence for or against the appeal. This evidence may be in the form 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 this hearing is not to engage the sentiment of the public or to hearing personal reasons why individuals are for or against an appeal, but all facts and opinions based on reasonable assumptions be considered. In the case of appeal for variance the Board must determine facts bearing upon hardship, the five (5) criteria set forth in the State's statutes.

L. Avery: Are we discussing the cases individually?

M. Perry: Yes.

L. Avery: On the first case, after careful consideration and further review. I do not feel that the Board definitively or accurately enough defined recreational use, not-for-profit. Since the issue was raised and being as such that issues raised during the hearing needs to be thoroughly deliberated on. I do feel that there is just cause in that particular case to rehear it.

T. Kinnon: I agree with that. I think that by rehearing it we can put an end to that misnomer of recreational use. I believe that it was stated just as a description of what he plans to use the property for. Not as you see it listed in the retail portion of the ordinance, retail and commercial use portion of the ordinance. It's not, I don't believe that's the way it was intended, but it does need to be clarified, because obviously there are members and people in this town that have taken it that way. So we need to clarify that and it will give us a chance to ask more questions, and in this case make it much more stronger.

M. Perry: Okay, thank you. Keith do you have any questions on the first case.

K. Chamberlain: On the first case? I don't know if I am going to contradict my two fellow members that just spoke for me. Again, I am going to repeat that the administrative appeal was based on the Code Officer's decision to deny the permit. As I look at the application submitted by the applicant, under Appeal from Administrative Decision, it states "The decision of the Enforcement Officer to be reviewed." Ruling on allowing only two car garages on Lakeshore Zone and on the next page I see the Reason for Appeal, a proposed garage is for the recreational, not-for-profit use of the applicant. To me that, I know there was a lot of discussion regarding recreational use as not-for-profit but that is not what we were hearing the appeal on and again, I will repeat, as in the applicant's attorney's Exhibit "A", which I can easily refer to the Building Inspector's denial of the permit, I will repeat again at this time, "A building permit application has been denied for your garage in the Lakeshore Residential Zone. Only residential garages are allowed such as two car garage structures. If you are grieved by the decision, please feel free to appeal to the Zoning Board of Adjustment." I personally feel that was what we heard, Case No.Z05-23 on. Yes, there was a lot of information that circled all around about what recreational uses, not-for-profit which was brought up by the applicant. That wasn't the reason for the appeal. And because of that I feel we could clear that up and would go, might suggest a rehearing to clear that up. But unless this Board is all on the same page as to what the heck we were hearing the appeal from then we're going to have a mixed bag of answers here. So at this point I'm not quite sure whether I can make a statement, but we have to make a motion.

L. Avery: I just wanted to rebut, not rebut but just speak to that. It is my understanding that anything that is brought up at the rehearing could be discussed. Is that not true?

M. Perry: Yes.

K. Chamberlain: For that reason alone, if it's sketchy, so sketchy, and I felt like I could bolster that in any way and that was my position, yes I would probably go for the rehearing, if the Board decides for a rehearing.

M. Perry: Angie, any comment on?

A. Bystrack: Not at this time.

M. Perry: I have several comments on the case. Based on the primary use in this residential area, the primary use is, as stated in the table of uses, is for single family homes, dwellings, accessory apartments, multi-family dwellings, manufactured homes, manufactured home parks, seasonal cabins, dwellings for elderly, combined dwelling and business, lodging house or guest house, bed and breakfast and hotel and motel, and that's what's allowed in that zone. According to the applicant's request, they were asking for a garage and then an apartment on the garage over the dwelling. The table of uses customarily you look at dwelling with a garage, that's usual and customary in this zone and usual and customary doesn't mean a 70-bay or a building that accommodates 70 vehicles. Generally, an accessory apartment is subordinate to the primary use in that zone, which is a residential unit. And so I have a problem with that and also, I think we could get more into the discussion of that if we did rehear the case. Also, the justification for the recreational, not-for-profit is in the retail business and service area and not in the residential uses, so I don't think that's a justification and it was used by both the applicant and members of the Board. So I think it warrants rehearing this case. So do I have a motion?

**T. Kinnon: I would like to make a Motion that we accept the application for rehearing of Case No. Z05-23. Seconded by L. Avery.** One thing though is I'd like in fairness to both parties and considering how long that has already gone on, I'd like to schedule the rehearing for somewhere around two (2) weeks from tonight rather than wait another full month.

M. Perry: Okay, we'll try to do that. We can fit that in? All in favor. . .

K. Chamberlain: Could we ask the attorney if that meets with his schedule? Cause obviously we have . . .

M. Perry: We'll try to schedule this yes. All in favor . . .? [Verbal responses heard]. Any opposed?

K. Chamberlain: Aye.

M. Perry: Okay, Bernie can you have something available in the next two weeks that we can set up?

Attorney Waugh: What did I tell you, I can't remember.

K. Menici: I have those dates right here. I can't believe it.

Attorney Waugh: That would be next week. Of course, you have to send out new notices. 17<sup>th</sup> that would approximately be two weeks, would be the 17<sup>th</sup>.

M. Perry: The 17<sup>th</sup> is fine.

K. Chamberlain: the 17<sup>th</sup> at what time?

M. Perry: 6:30, is that good with the Board?

K. Chamberlain: Should be ask the applicants if it meets their, they are right here. 6:00 p.m. November the 17<sup>th</sup>?

M. Perry: 6:30 p.m.

K. Chamberlin: 6:30 is it?

M. Perry: Okay, the next case. If you could read that into the records, Kathy.

K. Menici:

Case #Z05-37

Map, 21, Lot 5-6

Motion for Rehearing

Robert and Sandra Bahre

Hopewell Road

Application submitted by Alton Board of Selectmen for a Rehearing on Case #Z05-24 regarding the September 1, 2005, ZBA decision granting a variance to allow the property owners to construct a building with an average roofline of 45.5' in height where Article 200, Section 228B, Height Restrictions, of the Alton Zoning Ordinance allows a maximum height of 35'. The property is located on Hopewell Road in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District. Continued from the October 17, 2005 meeting.

K. Chamberlain: Madam Chairman. I just caught myself in an error, and I don't know if it's my error or the Town Planner's error, but I just referred to in the last conversation of the case, Z05-23, which I took off the verbatim minutes, but I see that on this agenda tonight it has a different case.

K. Menici: It has a new case number because the rehearing is a new case. If you read the text, see it references the original.

K. Chamberlain: Okay, so I would like to correct my comment about the last case, that the case number was Z05-36, and not Case Z05-23.

M. Perry: Okay, Case Z05-37, comments on the motion for reconsideration on this case.

L. Avery: On this particular case, I think that we have covered it quite well. I think we have asked all the right questions, we have a pretty lengthy set of minutes with information on the questions we asked and I don't think this one requires our consideration.

T. Kinnon: I agree with that. I do feel that considering the topographical situation of the land and in the fact that the applicant wants to provide access to the back for safety vehicles, the height variance needs to be granted and I think it was justly granted. Again the minutes were very lengthy in this area; all aspects of the height were taken into consideration and the slope of the land. I feel it was well documented and should not be reconsidered.

M. Perry: Angela, do you have a comment?

A. Bystrack: I feel that this case should be reconsidered in the fact that the reason behind it being so tall is it's a multi-level garage and I don't think it was clear as to whether the garage could be built with less height or not. I think that should be looked at.

M. Bystrack: Keith, do you have a comment?

K. Chamberlain: Yes, I do. In the Selectmen's Motion to Reconsider regarding the height variance, I feel we covered the case extensively enough to stand on our decision. I do also want to point out that clearly the record indicates, by the Board of Selectmen, that we didn't consider the lay of the land, but I think it's clear in the verbatim minutes that we looked at the topo of the applicant's property quite possibly no one mentioned if Mr. Bahre or the applicant wanted to change the design of the building to accommodate the reasonable use of the property if he did not violate the 35' height ordinance. He would have to eliminate the basement level and in my opinion, he would have to extend the first floor level which would have made it impossible to keep the house on the proposed structure on the lot within the property lines and away from the set-backs. Granted there was no big discussion about it but I think when we took a recess to look at the topo, that this Board as a group recognized the hardship on the land at that time, and I felt it was a big part of the Board of Selectmen's Motion to Reconsider on that case, and I still feel that we made the correct decision even if we didn't spell it out exactly.

M. Perry: At that time, I voted for this also because I thought that it had met the safety issue and I thought that was important, but when I go back to read the Board of Adjustment's issue of special exception to the height restrictions in any zone provided the structure is any of the following: and it lists the following, it lists specific things that it allows. My concern is that he can accomplish, that the applicant can accomplish this and keep within the restriction of the 35' that's required. I don't think that it's necessary to go to that height. That's my feeling. So I am changing my position on that. I felt that in the beginning it was, but I don't think that in this case it's, just because someone desires something, if they can work around that on that a lot that something else should be considered.

K. Chamberlain: I would also like to add to my comment that to change the construction of that particular structure, that Mr. Bahre felt he needed to accommodate his automobile collection, you know to go any closer to the lake you get into a sloping problem with the lot, which requires a great deal more fill, then the house is now set down below the road height, certainly there is all sorts of difficulties that are going to be encountered if you try to reduce the height of the structure. To me that's an economic hardship which was one of the qualifications that you have to meet with the OSHA test. At this point, Madam Chairman, **I would like to make a motion to deny the motion to reconsider for case Z05-37**, [Seconded by T. Kinnon],

M. Perry: Okay, all in favor? [**verbal** responses heard], all opposed?

A. Bystrack: Aye.

M. Perry: Aye. Okay two. Okay that motion passes.

[A Public Attendee made a request to Madam Chairman.]

K. Chamberlain: could you come to the, could you state your name and speak into the microphone for the record.

M. Perry: would you keep still.

Pat Fuller, Selectman representative for the ZBA. I have to see if the Selectmen's attorney is available on the 17<sup>th</sup>. He'll have to present our case.

K. Chamberlain; Can you get her to speak into the microphone so the secretary can get all this?

P. Fuller: Don't you need the Selectmen's attorney on the 17<sup>th</sup> to present our case on the . . .

Attorney Waugh: Yes, I don't know . . .

P. Fuller: Attorney Puffer.

Attorney Waugh: Yes, I he is not here to.

P. Fuller: We just need to see . . .

M. Perry: I think . . .

Attorney Waugh: They pretty much gotta set a date tonight.

M. Perry: Yes, I think that they need to make themselves available. I think that we can't decide that right now.

Attorney Waugh: If I could suggest, Madam Chair, if he is absolutely unavailable or they can't get something . . .

P. Fuller: We can set the date and just check first thing in the morning.

M. Perry: Okay, then you could get back . . .

Attorney Waugh: They could submit a Motion to Continue or to that affect.

K. Chamberlain: Or the other alternative, Madam Chairman, might be that instead of doing it in two weeks as Mr. Kinnon suggested, maybe give a month advanced notice and certainly busy attorneys

could schedule something at least in a month advance, where as two weeks in advance might not be enough for them to attend. We're gonna need a firm date to do a public notice.

T. Kinnon: I would like to respond to that. I feel that this Board should be setting the date of the hearings, not the applicants. Secondly, a motion was already made and voted on on that.

L. Avery: You know it's like a court date, you don't show up for court, your in default, they come get you.

P. Fuller: That's fine, just asking.

Attorney Waugh: Might I suggest that if it's appropriate to the Board procedures, which I am not entirely familiar with, that the Selectmen could certainly submit a motion. There have been enough motions that have been submitted in this case already.

P. Fuller: Yes, this is true. I'm just asking.

L. Avery: I don't think it's unreasonable. It's a motion . . .

P. Fuller: I mean you asked them if it was convenient for them.

M. Perry: I didn't ask.

K. Chamberlain: I think this Board would be open to a Motion to Continue. . .

P. Fuller: If it wasn't.

L. Avery: That wouldn't be unreasonable.

P. Fuller: Just checking. Thanks.

M. Perry: You can get back as soon as your can.

P. Fuller: Sure, we can find out in the morning.

M. Perry: Thank you.

P. Fuller: Thank you.

M. Perry: Okay. That's it, thank you.

K. Menici: You need to adjourn.

M. Perry: Can I have a motion to adjourn, please?

L. Avery: I make a motion that we adjourn this portion of our meeting.



K. Chamberlain: I'll second that.

M. Perry: All in favor? [Verbal responds heard]. Opposed? Thank you.

Respectfully Submitted,

Carolyn Schaeffner  
Recording Secretary