TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
April 5, 2012
Approved May 3, 2012 as Amended

I. CALL TO ORDER

Tim Morgan, Chair, called the meeting to order at 7:05 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Tim Morgan, Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

John Dever, Building Inspector and Code Enforcement Officer
Tim Kinnon, Member
Paul Monzione, Member
Lou LaCourse, Member
Steve Miller, Member
Paul Larochelle, Alternate

III. APPOINTMENT OF ALTERNATES

There was no appointment of the alternate at this time, as there was a full Board present.

IV. 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 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 has been or will be met.

T. Morgan informed all present that this Board desires to hear all cases, but that it is the practice of the Board to stop hearing cases at 10:00 p.m. Also, he requested that all public input be as concise as possible, and asked that if a point has already been made by another speaker, further comment on that same point should be kept to a minimum.

V. APPROVAL OF THE AGENDA

There were no changes to the posted agenda.

P. Monzione made a motion to approve the agenda as presented. T. Kinnon seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

VI. CONTINUED APPLICATIONS

Case #Z12-01 10-14 Lionel Terrace	Variance Map 40 Lot 4	Wayne and Karen Webster Lakeshore Residential District

On behalf of Wayne and Karen Webster, Arthur W. Hoover, P. C. d/b/a Alton Law Offices is requesting a variance from Article 400, Section 401 of the Zoning Ordinance to permit the property owners to identify four specific sites on their property to construct wooden platforms to house tents.

J. Dever read the case into the record. T. Kinnon recused himself from this case.

P. Monzione made a motion to appoint Paul Larochelle, Alternate, as a member for the purpose of hearing this case. L. LaCourse seconded the motion which passed with four votes in favor, none against, and no abstentions.

As this application has already been accepted as complete, Attorney Hoover immediately began his presentation. He was accompanied by the applicants, Karen and Wayne Webster.

The property is a 3 acre parcel that has been in the same family for over 70 years. It is a family compound used by family members; there are three cottages that have been there since the 20's and 30's.

The applicants are requesting 4 tent platforms on the site; they are not requesting permission to have a campground. Mr. Hoover spoke about the definition of campground and how it is used in the ordinance. The ordinance references "one or more sites designated for a tent in any zone, for any use, on any lot, constitutes a campground." Literally applied, even having one tent site on a home lot, used by a grandchild who wants to sleep out, would constitute a campground. It is due to that definition that the variance is required. This application is for use only by family members, not as a campground as one is usually perceived. Additionally, in section 355, there is another definition for Recreation Campground Parks; in that definition you don't qualify as a campground until you have five sites. He mentioned this only to point out inconsistencies in the ordinances that need to be reworked.

The property is currently titled to three sisters who are the third or fourth generation of ownership. They each on one third of the total; there are not three separate ownerships. The four tent sites being requested are for the lot, not four sites for each cabin making a total of 12 platforms.

Traffic has been mentioned as a problem. Traffic will not change; the same number of people who currently use the property will continue to use the property whether or not the tent platforms are there. It is family members only regardless of where they sleep. Additionally, they do not use Wentworth Way, which is the access to the Peggy's Cove properties; this site is accessed through Lionel Terrace, which is a private road.

There is no automatic expansion of the tent platforms; four is the total amount and the total amount cannot be added to.

Mr. Hoover went on to explain that the granting of this variance would not create a precedent as each case is decided on the basis of its own merits.

Mr. Hoover addressed concerns about the septic systems. There are three systems on the property; two of them are updated and one is not. The one that has not been updated is grandfathered and is not in failure; there is no requirement to replace the system as long as it is not in failure. J. Dever has stated that he would issue a cease and desist for occupancy of the property if the system were ever to fail. This is a seasonal use only; the impact will not be increased due to the use of the tent platforms because the same numbers of people are involved. The Peggy's Cove residents are serviced by a community well which requires periodic testing. If the grandfathered

system were to fail, evidence would show up during that testing. If the contamination was traced back to this system, the owners would be enjoined from using the property.
Attorney Hoover stated that the platforms were constructed before his clients were aware that they needed building permits; it has been determined that one of the existing platforms would not need a permit anyway. The applicant has agreed that all of the platforms will be subject to building permits which will allow J. Dever his input. Five of the platforms have been in use off and on since the 1990's; the request now is for four. No objection was raised to the platforms during the 20 or so years they were present. They were noticed at this time by J. Dever who happened to drive by and saw one of the platforms under construction; there was no complaint.

The closest abutters are Lots 5 and 2-1. Neither of them objects; the owner of lot 5 has written a letter in support of the proposal. The letter addresses the writer's desire to see the continuation of closeness created by having four generations of the Webster Family getting together through the summer. Additionally, lots 2-1, 4, and 5 are the most valuable properties in this area; this letter comes from a direct abutter who has no concern about this. Lots 15, 16, 17, and 18 abut Wentworth Way, which is across the street from the subject property. The rest of the properties in Peggy's Cove do not qualify as abutters, but they are people who were required notice due to requirements of the Board. Attorney Hoover referred to a drawing showing the properties from which letters of disagreement have been received. The properties with the most to lose, if there is an adverse impact, are not among those.

Attorney Hoover reiterated the history, layout, and use of the property. The tent platforms have been used since the 1990's; the use of the property as a family gathering site has been the same for over 70 years. The use of the platforms has never been an issue nor has it been the source of any complaints until the platforms were noticed by J. Dever. The decision of the code officer to not allow the use of the tent platforms was appealed; the Board denied the appeal. For this discussion, the definition of campground must be used, even though they feel it is unreasonable. The cabins are grandfathered, as is the septic and there is no evidence of failure. The same number of people will be on the property whether they are using bunk beds in the cabins or the platforms. If the septic system fails, the cabin must shut down, but there must be evidence of failure.

Their proposal is to reduce the number of platforms to four, and to relocate them on the property so that they are further from the property line and also further away from the creek running through this property. Attorney Hoover used visual aids to show the new locations of the platforms. One of the existing platforms could become a screen room, not for sleeping; this is a separate proposal not part of the current application.

Attorney Hoover went through a proposal he has put together on behalf of his clients.

1. A variance from provisions of Section 401 of Article 400 of the Zoning Ordinance to allow four tent platforms on Lot #4 on Tax Map 40 in the Lakeshore Residential Zone.

2. Conditions to be attached to Variance:

   a. The four tent platforms will be determined by the Code Enforcement Officer.

   b. The precise location of the tent platforms will be determined by the Code Enforcement Officer as he is the best able to determine the exact placement.

   c. No tent platform shall exceed 16' X16'

   d. Building permits must be obtained for each of the four tent platforms. This will allow the Code Officer to attach requirements concerning safety issues and so on.

   e. The platforms will not have roofs, sides, or poles to support tarps. If any are currently present, those will be removed.

f. Only one tent shall be allowed on each platform.

g. The platforms can only be used and occupied from June 1st through September 30th in any calendar year. At all other times the platforms cannot be occupied or used.

h. The platforms can only be used by family members and their guests. The platforms cannot be used for rental purposed or any commercial purposes. The platforms are only available as sleeping quarters for members of the family and their guests. Any issues of policing will be handled exactly as any other variance; if there is concern about the use, a complaint would be lodged with the Code Officer who would then follow up and determine if any action is needed.

i. No structure including tent platforms can be built on the easterly side of the stream as shown on the Plan. This would mean that there would be no platforms between the stream and Wentworth Way.

j. No change in the location of the tent platforms will be permitted without the approval of the Code Officer.

k. No alteration of the tent platforms will be permitted without the approval of the Code Officer.

l. The Variance will terminate at such time as the property is no longer titled to the existing property owners (the family members) and their heirs.

3. The Variance approval with the conditions will be recorded at the Belknap County Registry of Deeds and will be considered as covenants running with the land. This will protect the abutters and the property itself.

Attorney Hoover addressed the components for granting the variance. He stated that the variance would not be contrary to the public interest. The use of tents on platforms to provide sleeping quarters for family members will not alter the essential character of the neighborhood. They have already been there for 20 years, and no one has made an issue of it. This property and the surrounding properties are seasonal and residential with lake frontage and/or access. This proposal does not change the residential use as the proposal restricts the use of the tent platforms to family members only and specifically prohibits any commercial use.

The use of the platforms to provide additional sleeping quarters for the family will not threaten the health, safety or welfare of the public. The use of the platforms will be for family members only and will be seasonal and therefore probably on weekends. That gives them an opportunity to continue the family compound use as it has been for the last 70 years. The tents will only be used for sleeping and will not be available for public use. There will be no cooking or bathing facilities in the tents. There is adequate parking for all family members off Lionel Terrace; there will be no vehicles parked at the tent platforms. This last could be added to the conditions.

Foliage restricts view of the tents from neighboring property; the tents will be removed before the trees are bare in the fall. Again, the platforms have been there for quite a long time without complaints from the abutters.

The request is in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety and character of the lakeshore residential district. The use of the tents will be restricted to family members only and to residential purposes, which is in keeping with the characteristics of the neighborhood and the zoning district as a whole. The use of four tent platforms for sleeping quarters does not change the residential nature of the zoning district.

The lakeshore residential zone is designed to protect the lakeshore and maintain the rural and resort qualities associated with proximity to the lake, which make Alton a unique community. The use of this property as a family gathering place represents one of the ideals Alton seeks; the ideal of a small town feel represented here by multiple generations gathering as a family and summering together on the lake. The tent platforms will

facilitate the ability of this family to gather together; this gathering promotes the spirit of the ordinance and the intent of the Master Plan. Again, the definition of "campground" is unreasonable when applied to this proposal. The ordinance is designed to restrict commercial enterprises, such as a campground as one normally exists. There is no suggestion of commercial or retail enterprise in this proposal. Rather than promote the residential use as designed by the ordinance, this seems to restrict use by denying owners the ability the use their properties for sleeping in a tent on one's own property.

This use will not threaten the health, safety or welfare of the public. By granting this variance substantial justice will be done because the proposal is consistent with the residential nature of the neighborhood and there is no gain to the public in denying the variance. Enforcing the definition of campground is unfortunate. Denying the family the use of four tents to accommodate sleeping arrangements for family members does not meet a public need greater than the owners' goal of bringing multiple generations of their family together at their lake home on weekends in the summer. The owners will restrict the number of platforms, the number of months they can be used, and who can use them. The platforms will not be offered to or used by the public; they are purely for use by the family. There is no public gain in denying the owners the ability to use four tents for four months for family members. This is a three acre site; the average property in Peggy's Cove is ¼ of an acre. Using that to look at density, there could be 12 homes on this three acre site.

The request will not diminish the value of the surrounding properties. The use is restricted to residential use which is the same as surrounding properties; these have been there without complaint. If there was an adverse impact, it would have been raised before. The family has been using these tents for overnight accommodations for over 20 years; assessments have not dropped more than what is consistent with the current economic conditions. There are no indications that use of the tent platforms has had any negative affect on the values of the surrounding properties. The ones who would be most directly impacted are the direct abutters; they are in support of the proposal.

The literal enforcement of the ordinance would result in unnecessary hardship. There is no fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to this property. The purpose of the restriction in the lakeshore residential district is to prevent commercial or retail enterprises which frustrate the ability of owners to enjoy their property for residential purposes. This proposal is for residential use; the proposal just happens by sheer circumstance to meet the definition of campground in the ordinance, which should not apply to this proposal at all. The use is not commercial or retail and will not frustrate the ability of the neighbors to enjoy their properties for residential purposes. If there were a ¼ acre lot with one tent site, that would constitute a campground; is it reasonable to think the ordinance was intended for that situation? The general public purpose of the restriction of campgrounds in the lakeshore residential district should not apply to this use – it is overkill.

The application of the campground definition to the proposed use is not necessary to promote a valid public interest. Four tents and platforms for four months each year for family members will not interfere with the public good. In fact, multiple generations have enjoyed time together as a family; there is a valid public interest to promote the qualities of Alton and promotes the unique characteristics of the neighborhood. The use as stated is a reasonable one; the property has been used as a family gathering place for forty years; the three cottages have existed since the 30's. The owners should expect to be able to continue to use the property as a family gathering place. The tent platforms have been there since the 1990's; it is reasonable for the owners to expect to continue using them.

Attorney Hoover wrapped up his comments and invited questions from the Board.

P. Monzione asked about the current status of the platforms that were in violation. Attorney Hoover explained that the platforms are still there but are not in use at this time. P. Monzione asked if the variance is granted pursuant to the conditions set forth by Attorney Hoover, what happens to the platforms after condition 2-l or 3 are met. Attorney Hoover answered that the platforms would be removed by the current owners; that could be

added to the conditions. Additionally, the conditions would run with the deed, so any new owner would be aware of that.

S. Miller addressed the potential change in value and asked if the statement that the values have remained in line is an intuitive judgment or whether there is quantitative date. Attorney Hoover explained that they had looked at property assessments and could find nothing that indicated that there is an assessment reduction as a result of this activity. No comps were used, but Attorney Hoover did add that he is not sure there would be any value to that due to the overall drop in values. Additionally, he is not sure they would even be able to find comps, due to the unique nature of this property.

P. Monzione asked about the conditions on any variance that might be granted; if the platforms are 16' X 16', they would require a building permit anyway. Attorney Hoover agreed and added that they are already up; the applicant does not want to get into a situation and they agree that a building permit should be acquired. P. Monzione followed up by asking why the platforms were still up when the Board had affirmed the Code Officer's decision that they were in violation, and that they needed building permits anyway. Attorney Hoover explained that the platforms are going to be moved to different sites.

T. Morgan asked J. Dever if a variance that runs with the land can be terminated by the conveyance of the property. J. Dever answered that normally the variance runs with the land permanently; were the Board to affix that condition; it may or may not be enforceable. Attorney Hoover stated that he had discussed that issue with Ken McWilliams, Planner, and he agreed that if it is an issue, the question can go to Town Counsel for his approval. T. Morgan also pointed to the recent codifications of the hardship aspect of the variance and asked Attorney Hoover to address the special conditions of the property that would show hardship and would warrant granting the variance. Attorney Hoover answered that primarily it is because there has been no change; the property has been in the same situation for 70 years. The special condition is that there are three structures on the lot, which creates a distinction between this and other properties. This is a three acre parcel where others are ¼ acre. The four tent platforms do not create the same density as would occur on a ¼ acre parcel; that is a distinction between this property and the surrounding properties.

T. Morgan opened the floor to public input and requested that all speakers come forward to a microphone and to clearly state their name for the record. The first public input was for those speaking in favor of the proposed variance.

Karen Webster, property owner, stated that her four children will be directly impacted by this; they live 1 ½ to 2 hours away. If they are not able to sleep at the property, their weekends together would be pretty much non-existent. They might be able to come for a day, but the way they have always lived their whole lives on the property is spending weekends at camp. Nothing has changed in the family except that the kids have gotten older, and they have gotten married; they still want to come spend the weekends at the lake. The only summers they know are to come up to the lake and live there – this is their second summer home. She asks that they be given permission to continue living the only way they know during the summers.

Wayne Webster, property owner, thanked Attorney Hoover for his clear representation. He stated that they have been on the property for 80 – 90 years and have been good neighbors the entire time. There have been no wild parties, excessive noise, or any other issues. He is uncomfortable with sitting with neighbors who seem to think they are going to be doing those things and polluting the environment. Their family values are such that they do not do any of those things that would impact their neighbors in any negative way. They will continue to be good neighbors, even if the outcome of this meeting is unfavorable.

Marsha Callahan, property owner, stated that they did not know that their tent platforms were any kind of violation. As children came along, they made sleeping space for them right outside the doors. Each of the three sisters has four children; the 12 cousins grew up together. They are all adults now starting their own families, but they still want to come to camp and they still want to be with their family. Mrs. Callahan gave a brief history of the property, going back to 1926 when the three acre parcel was given to her grandparents by a family

friend. Her grandfather was involved with the Alton Bay Christian Conference Center for over 30 years; they lost their cottage there when the Conference Center burned in 1945. Her grandfather also enjoyed the land and would organize hikes and hold Bible studies at the top of Mount Major; the family continues to climb Mount Major frequently throughout the summer. The family continues to love the lake and the surrounding area as did generations past. They do not take their property for granted; they would like to keep the four tent platforms so their family can continue to be together as a family on the property, and that they might continue to pass on their wonderful heritage. They are doing nothing different than they have done all their lives; for the past 20 years these tents have served as bedrooms for their families.

Daniel Callahan, son of Marsha Callahan, has been coming to this property summers since birth. He pointed out the opportunity he and his cousins have had to grow closer together; he has the exact same number of cousins on the other side of his family and even though they live in closer proximity to each other, he is not as close to them. As his aunt pointed out, if the application is denied and they are only able to come up for the day, it will impact how they interact and hang out together. He asked that the Board please consider this proposal and allow the family to continue as they have been for so many years.

Brandon Webster, son of Wayne and Karen Webster, spoke about how their grandfather passed on his work ethic and how meticulously the property was maintained. He recalled any given weekend could be spent fixing the cabins, building the tent platforms and removing sticks. On one occasion, all 12 cousins were required to sweep the road from 28A all the way to the lake. They take pride in the property and how they maintain it. They appreciate what has been passed on to them. The tent platforms will blend with the land; they will not be eyesores.

Sarah Manu, formerly a Webster, spoke along the same lines as her father; they are great neighbors who have never had a noise complaint. No one would know that the property has grown as it has or how many people are on it. They take pride in how the property looks; anyone coming onto the property would think it is well taken care of. They spent their April vacations picking up sticks and intent to continue to do so.

Richard Callahan, property owner, noted that the tent platforms have been noted on the tax assessors report for decades and they have been showed on previous building permits when one of the cabins was reconstructed. They were not anything new or anything the town has not been aware of, or anything that would change an assessment that was existing.

T. Morgan opened the floor to public input in opposition to granting the variance.

Eric Brown of 27 Peggy's Cove Road, spoke on behalf of the Peggy's Cove Association which consists of 16 homes; he is speaking on behalf of all 16 homes. Many of the homeowners have written their concerns over the past several meetings during which this case was continued.

Mr. Brown spoke about the concerns of having a campground; their first concern is that adding four tent platforms is akin to adding four more bedrooms to the septic load which is not approved for four more bedrooms. If they were to build a house or add four bedrooms to an existing house, they would be required to meet code and have a system to meet the septic load. They have a system grandfathered for what is there, not for what they want to add.

The next concern is the value of the property. The Peggy's Cove Association is concerned about their values; not by how the town assesses but by the perception of a prospective buyer looking to buy their home. When properties go up for sale and a prospective buyer sees a campground next to them, the prospective buyer does not know that it is family. They see a campground, and it is going to lower the value of the property and possibly even eliminate an offer.

The Association also feels that this would be inconsistent with other properties in the neighborhood; all the properties in the neighborhood are single family homes with two and three bedrooms. None of the properties

have tent platforms now. They also feel that the applicants haven't shown a hardship that they can't build an additional property or a new property that would have four bedrooms, a septic for four bedrooms, and go through the proper channels. The Association also feels that the conditions of the variance, if it were approved, would run with the land, regardless of whether or not there was a termination filed at the Registry of Deeds to terminate that variance at a certain point, which could be 300 years. There is no set condition or time; even if there was, it is the Association's position that at settlement time it would not be legal, and that it would run with the land forever.

Ken McLeod of 493 East Side Drive stated that everyone on that property has been a good neighbor; he has never thought or implied otherwise. He is opposed for the following reasons; the variance will be contrary to the public interest. A campground in this area is not consistent with other properties in the area. The area is made up of single family homes – some seasonal and some year round. To his knowledge, there is no other property in the surrounding Lakeshore Residential zone that has been granted zoning for a campground. This use is not consistent with others in the neighborhood. The request is not in harmony with the spirit of the zoning ordinance or the intent of the Master Plan, or with the convenience, health, safety and character of the district within which it is proposed. Family use of three houses on the property is certainly in keeping with the characteristics of the neighborhood. However, there are no other properties in the area with permanent tent sites. It has been established that this proposed use establishes a campground under the current zoning ordinances. Granting this variance will alter the essential character of this locality. No property gathering place should impact the safety of their neighbors; there would certainly be an impact on the neighborhood if they all had tents in their backyard. They plan their family and fit them into their small, modest house; they do not have three acres to spread out on so they schedule people accordingly. The potential exists for health issues based on the ability of the existing septic to handle four additional bunk rooms, when they are added to the existing bedrooms in the houses. There is a brook flowing through this property that runs directly into the lake, and it is also next to the community water system, which is monitored quarterly. The request will diminish the value of surrounding properties; it is the responsibility of those seeking the variance to prove that granting the variance will not diminish the value of surrounding properties. The listing of properties sold over the past years is not shown in the application; an appraiser needs to look at properties abutting campgrounds to put values on the properties as if they were not next to a campground. There is no assurance of the accuracy of the numbers in the application as his home is listed incorrectly. He has spoken to two appraisers who indicated that the value of properties next to campgrounds is negatively impacted; this would require some research by an appraiser to give a written opinion. He recently sold a property next to a campground because of its location; they carefully selected their new residence based on the zoning it was in. Literal enforcement would result in hardship; nowhere in the ordinance does it state that the campground must be commercial or retail to be defined as such. It has already been established that the current use is a campground. Allowing a campground to exist in this zone absolutely will impact the ability of others to use and enjoy the peaceful surroundings of the Lakeshore Residential zone as the properties are intended. There is no reason for the property owners to expect not to use their property as a family gathering place; they all enjoy having family at the lake, but they do it in accordance with the zoning requirements of the area they live in.

Public Input was closed.

Attorney Hoover rebutted a few of the comments. He again reiterated the unfortunate use of the word "campground"; they are asking for four tent platforms. The definition of campground is "a parcel of land with one or more specific sites that has the provision for pitching of a tent." If there was one site on any one of those properties, it would qualify under the ordinance as a campground; that can't be what Mr. McLeod is referring to. He is saying that the ordinance uses that unfortunate word. In section 355, it calls a campground a recreation camping park and it states that a "recreation camping park shall be an approved lot in which five or more campsites are occupied or intended for temporary occupancy." He can understand the sensitivity if this were more that what is being talked about here. This is four tent platforms utilized for family members only. As far as property values are concerned, he did find that the platforms have been there for a number of years; during that time people have purchased in the Peggy's Cove area and put additions on and improved their properties, all of which occurred while the tent platforms were on the property. If there is a real concern about values, it is

difficult to understand why those additional expenses and costs would have been entertained. It is because it was not a big deal; it was not a big deal until John Dever rightly identified the definition issue. That is why they are here requesting a variance. He also suggested that if the zoning ordinances are ever addressed, this conflict should be resolved. Assessments were checked and they looked at sales from 2002 to 2010, which in 2002 ranged from $139,900 to $400,000 in the Peggy's Cover area; the lots with the highest value are lots 4, 5, and 2-1, all of whom support this proposal.

P. Monzione asked about the septic systems presently on the lot. Attorney Hoover answered that there a two septic systems that have specific designs for bedrooms; the third septic system is grandfathered and is not designed for any number of bedrooms. It only has to be replaced upon failure. P. Monzione asked how many bedrooms can be accommodated by the existing septics; currently they can accommodate 4 bedrooms, 3 bedrooms, and undetermined in the grandfathered system. Currently there are 6 bedrooms served by the existing systems.

P. Monzione spoke about the difference between this variance and simply pitching a tent in one's backyard. Attorney Hoover discussed that with the town planner; technically, any site that is prepared for camping, whether it is a platform or a cleared area on the ground specifically for pitching a tent, clearly delineates that as a campsite. P. Monzione went back to the specific provision rather than an ad hoc situation where a kid might sleep here or there on any given weekend.

S. Miller stated his significant concern about whether the constraints, which he considers fair and reasonable, would go with the land at some later date. He could see a hypothetical situation where an offer is made for the property for the specific purpose of pitching tents on the land, or some other use like that, and that the constraint stopping with the sale could open a can of worms in terms of precedent. Attorney Hoover pointed out that there can be no additional provisions beyond the four sites; it can't be increased. If it is a concern, they are prepared to say that once the family is no longer interested in it, the provisions can go away. If the variance is granted, there can never be an addition to it. T. Morgan added his concern as to whether the variance could indeed terminate upon conveyance. Attorney Hoover agreed and added that they are offering that up; they agree that when the family no longer needs it, there is no need of the variance. This has been discussed with Ken McWilliams, who will work with Attorney Hoover to come up with the language to make it happen.

The Board deliberated briefly. P. Monzione voiced his wish that this could be something done just on the basis of personal feelings; this family has been gathering for many years and he believes that they are meticulous in their property maintenance. This is what he would like to see for lakefront properties; this multi-generational gathering of the family is just what is desirable for this type of property. The difficulty is the definition of campground which the Board is obligated to enforce; all they can do is apply the law to the criteria to see if they are met. He is troubled on the issue of the variance running with the land; even if that condition were imposed if the variance were to be granted, he is not sure the condition would be enforceable. Attorney Hoover asked how the Board would feel about a specific term of years. P. Monzione stated that the Board could deliberate that, if it became an issue. T. Morgan questioned the usefulness of having the variance run for a set number of years; Attorney Hoover explained that if it runs with the land, it is limited to four and only for the use of the family. He is suggesting that once the property passes from the hands of this family, the variance is no longer relevant. T. Morgan pointed out that it could be relevant to a buyer who sees it as having been in place and that the conveyance cannot terminate. Attorney Hoover explained that they would still be restricted to four tent platforms in the given locations, period, and it could only be used for family purposes. T. Morgan cited his concern about the language in the ordinance; it is a difficult call.

Attorney Hoover suggested contacting the Town Attorney for clarification on that issue and whether it is his legal opinion that the variance can be terminated when the property transfers out of this family's ownership. T. Morgan answered that he would be more comfortable with that, in regard to that particular issue. P. Monzione agreed that it would be good to have opinion of counsel on that one subject, but pointed out that there are still other criteria that would need to be met. L. LaCourse agreed that counsel opinion on that issue would be

welcome, but he is also concerned about property values. He suggested input from the town appraiser; he would like to know if this action would have a negative impact on values or not.

L. LaCourse requested a continuance to the next meeting in order to gain input from town counsel and from the town appraiser. P. Monzione seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

This application was continued to the May 3, 2012 meeting; J. Dever will contact town counsel and the appraiser for the town.

VII. NEW APPLICATIONS

Case #Z12-02 **34 Camp Brookwoods Road**	**Special Exception** **Map 18 Lot 15**	**Christian Camps and Conferences** **Lakeshore Residential Zone**

On behalf of Christian Camps and Conferences, Inc., Andrew Tobin of North and South Construction is requesting a Special Exception to allow the construction of two cupolas on the roof of a proposed addition to match the existing building. The proposed cupolas are taller than the Town's zoning height regulation of 35' by approximately 10'3". This property is located in the Lakeshore Residential Zone.

J. Dever read the case into the record. T. Kinnon is sitting for this case, so Alternate P. Larochelle is no longer needed to act as a member.

P. Monzione made a motion to remove P. Larochelle as an alternate as there is now a full Board. L. LaCourse seconded the motion which passed with five votes in favor, none oppose, and no abstentions.

The Board reviewed the application for completeness.

P. Monzione made a motion to accept the application as complete. T. Kinnon seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Andrew Tobin of North and South Construction came to the table to present. He explained that they are requesting a Special Exception to the height ordinance. The addition, as proposed meets the height requirement. The cupolas are taller than is allowed. The new proposed addition and cupolas are in keeping with the existing cupolas on the existing building. The current building/cupolas are taller than the ordinance, but they have been there for a long time. The new cupolas and building are considerably lower in height than the existing building and cupolas.

Though the cupolas are designed for their aesthetics, they are also designed to incorporate the exhausting requirements from the kitchen as well as smoke ventilation in the event that the building goes into alarm.

L. LaCourse asked about the match to the existing cupolas; J. Dever explained that the edition is lower than the height of the existing building, and these cupolas will be less than the height of the existing cupolas. Mr. Tobin explained that they are designed proportionately and are sided and designed to be in line with the overall design. They do not match in size, but are proportionately the same.

S. Miller asked if other options were looked at for the venting. Mr. Tobin answered that they had not. S. Miller asked if smaller cupolas would provide the same remedy for the ventilation issue. Mr. Tobin answered that they would and added that the height is part of the proportion and design requirements; he could look at making the roofline a little shorter. S. Miller asked why they could not be built to code. Mr. Tobin answered that he is one of the designers of the project and that even though it is always appropriate to meet the clients' concerns and programs; this is driven by the clients' needs, not his need to have a monument to himself. In this case, the approach in this case is to make the addition feel like it is part of the existing barn, in keeping with the property. The cupolas are an integral part of the design. He met with J. Dever and K. McWilliams and adjustments were

made to the design in order to stay within the code. He would prefer not to have to seek a variance; it is time consuming and costs his client money. They tried to stay within the ordinance, but they were also trying to keep things in line with the existing building and would not overpower the existing structure, and with the idea that not only are these aesthetics, they are also disguising what could be construed as ugly mechanical equipment on the roof.

L. LaCourse asked about the outside dimensions of the cupolas. Mr. Tobin answered that they are 6' X6' square without floors, and they are to be unoccupied and inaccessible. They will have duct work going into them so they will be accessed for maintenance. There will be no lighting, but there will be some mechanical equipment including an exhaust fan moving the air through them.

P. Monzione asked about Department Head comments. There are no concerns from fire, police or conservation.

L. LaCourse asked about existing living space on the second floor. Mr. Tobin answered that the existing kitchen is inadequate for the existing number of campers during the summer. The existing el of the building that has the kitchen now will be demolished; the dining room will push into that space. There are currently two sleeping quarters which are being replaced in kind; there is currently a third party code review in process to make sure the building meets all life safety requirements. J. Dever added that the additional space will be used as meeting rooms. There are two small living units, but the bulk of the space will be meeting space.

P. Monzione asked about the height restriction in regard to the landing strip on the bay; he asked if the addition of these cupolas would hamper the approach in any way. Mr. Tobin pointed out that the trees and utility poles on the site now are much taller than the proposed cupolas are going to be; J. Dever concurred with that statement.

S. Miller asked about any other rationale to the height other than safety, blockage of view, or accessibility. J. Dever answered that in this case, there are no issues because there are no abutters.

T. Morgan opened the floor to public input.

P. Larochelle, the Ice Runway Manager, explained that the runway does not begin until 100' north of the bandstand in the middle of the bay. That constitutes the direction of landing from south to north; all landings and takeoffs are in that direction, so they are nowhere near that area. That goes for ice or seaplane landings.

There was no further public input on this case.

S. Miller stated that there seem to be a lot of these requests; it seems to be "no harm, no foul." T. Kinnon explained that the concern is mostly due to fire department ability to reach the height, and there has never been a concern voiced by them. There is actually some consideration for removing this restriction for cupolas because it is not practical anymore. J. Dever stated that this is being visited to see if there is a need always to come in for a Special Exception. L. LaCourse added that there is also discussion of defining the size – when does the addition stop being a cupola and become a room. P. Monzione read the section of the ordinance that addresses the height restriction and specifically mentions that cupolas are allowed by Special Exception as long as it does not restrict access to the airport. He feels that the Special Exception process is good so that the town knows where they are going. T. Kinnon added that this request is one that should be in front of the Board because of the size; this is not a cupola that you buy on the side of the road and climb a ladder to attach to your roof.

<u>WORKSHEET</u>

All members agreed that a plat has been accepted in accordance with Town of Alton Ordinance 520-B.

All members agreed that the specific site is appropriate for the use; it replicates and does not exceed the height of what is existing. It is not taller than the surrounding trees and utility poles, and will add the function of housing the ventilation systems.

All members agreed that there is no factual evidence that property values in the district will be reduced due to incompatible uses; the use is the same as it has always been and is compatible with the uses in the area. Additionally, no evidence has been presented concerning any reduction to values.

All members agreed that there were no objections from abutters based on demonstrable fact; there was no input at all.

All members agreed that there would be no nuisance to pedestrian or vehicle traffic including the location and design of access ways and off street parking, or to air traffic.

All members agreed that appropriate and adequate facilities and utilities would be provided to insure proper operation of the structure. Ventilation will be incorporated in the cupola design.

All members agreed that there is adequate area for safe and sanitary sewage disposal and water supply, although this is not really applicable to the addition of the cupolas.

All members agreed that the proposed use of the structure is consistent with the spirit of the ordinance and the intent of the Master Plan; this use is provided for in the ordinance, and it is the intent of the Master Plan to maintain good looking structures in all zones or locations.

L. LaCourse made a motion to approve the Special Application for Case #Z12-02. S. Miller seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Case #Z12-03	**Variance**	**David and Catherine Fonzo**
26 Acorn Drive	**Map 66 Lots 32 and 34C**	**Lakeshore Residential Zone**

On behalf of David and Catherine Fonzo, Gerry W. Smith is requesting a variance for the construction of a new home with a 39' +/- waterfront setback where 50' is required.

J. Dever read the case into the record and informed the Board that at the last Planning Board Meeting, the two lots referenced in the agenda were merged into one via a voluntary lot merger.

The Board reviewed the application for completeness.

P. Monzione made a motion to accept the application as complete. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Gerry Smith, the designer of the proposed project, came forward to present this case. Dean Clark, the site surveyor and septic designer, was also present.

The existing camp has grown into a year round home; the present owner has had it for 12 years. They come up for weekends in the summer and occasionally during the winter. The existing structure is 950 square feet; they initially wanted to add attic loft space by raising the roof. After examination it was determined that raising the roof would not solve all of the issues, as there is no foundation existing. Attempts were made to locate the new structure so that a variance would not be needed. Unfortunately, there is a storm drain right of way, and the new regulations require that the septic has to be 25' from the storm drain and 15' from the house. There is a very small area for the septic near where the existing well is. There is an existing garage with an extensive paved area accessing it; the septic is going to be under the existing pavement. Against the original desires, the garage is going to be torn down and incorporated with the house to make a smaller overall footprint. The house is as far back as possible while still leaving a small area for the septic. The new structure will be about 1,000'

downstairs and 600' upstairs under the eves. There will be a laundry, stairway, and basement dependant on site conditions. The basement will not be finished; they want to maintain the camp mentality and not have another house to maintain.

They are gaining a lot of square footage due to raising the roof. The drip edge currently sits about 39' from the setback. The movement will improve the views of the abutter to the left. The applicants' view will be slightly obstructed by the movement, but they will move further away from compressor noise from the neighbor to the right.

Mr. Smith feels that everything has been done to attempt to locate the new structure within the setbacks, but the septic location is driving everything, including the need for a new well. This will be a high efficiency, year round home.

Mr. Smith addressed the five criteria that would need to be met for the variance. He stated that the variance would not be contrary to the public interest because this is the worst property of five on the street; all of the neighbors maintain their properties meticulously. Tearing this structure down and replacing it with the new one will improve the neighborhood. Because of this replacement, values will not be diminished; they will probably improve. The spirit of the ordinance is observed; they are trying to comply as closely as they can with state and local requirements. Substantial justice is being done because the client will be allowed to build their dream camp. This is going to be a high efficiency, modern year round home that will be more attractive. Literal enforcement would be a hardship due to the size and restrictions on the lot caused by DES requirements and the town's ROW. Everything is much more conforming and much more attractive, and the total lot coverage is less; drainage will be improved with the use of pervious pavers. There are two large trees that need to be removed and the owner is going to add landscape plantings to the property.

Dean Clark explained the lot line adjustment; the original lot line was straddled by the existing house. The two lots were part of the Winnipesaukee Development which was parceled out in the 1890's. Both parcels were owned by the applicant.

L. LaCourse asked about other setbacks; all setbacks are met except for the waterfront setback. The proposed structure is turned 180 degrees so the neighbor across the street will not be looking at the ridge but will see down the sides of the structure. S. Miller asked if eliminating the garage would negate the need for the variance; Mr. Smith answered that it would not. P. Monzione asked about the overhangs on the plan. The overhangs are shown on the plans; the foundation is actually about 41' from the shore. P. Monzione spoke about the new regulation 320-A-6 which states that if there is an existing structure torn down and replaced in kind, there is no need for a variance. This is not applicable because replacement is not in the same footprint. DES approval has not been obtained; this was the first step, which will be followed by DES approval and septic design.

There was no public input on this case.

<u>WORKSHEET</u>

All members agreed that the variance will not be contrary to the public interest. The applicant is improving this property tremendously and working within a number of restrictions including setbacks and septic placement. This is well thought out and well planned.

All members agreed that the request is in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed. The design is very nice and the roof line has been turned which will increase the view for the neighbor. Drainage issues have been addressed and a significantly non-conforming house has been made significantly more conforming.

All members agreed that by granting the variance substantial justice would be done. Property values will be improved and the applicant is adhering over and above to all environmental considerations.

All members agreed that there would be no diminution of value of surrounding properties. There is no evidence presented that there will be an adverse affect on surrounding properties. In fact, based on pictures of the existing and abutting properties, it is likely that values will improve.

For purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area that no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property. This is a small property with unusual boundary constraints and the proposal is one which replicates the current use of the property but makes provisions for the unusual size and shape of the property. It is a well thought out plan which was extremely well presented. Additionally, there is a drainage easement that makes the property even more unique. It is also going to become a four season home rather than just a seasonal cottage.

As all criteria were met without opposition, a universal approval of the variance was granted.

Case #Z12-04	**Variance**	**Ruth Webb**
142 Spring Street	**Map 36 Lot 34**	**Residential Commercial Zone**

On behalf of Ruth Webb, Thomas W. Varney, PE, is proposing to add an addition, a garage, and a deck to the existing cottage. Part of the proposed deck and stairs are within the twenty five foot (25') right of way setback.

The case was read into the record by J. Dever. Mr. Varney came to the table to present this case.

The Board reviewed the application for completeness. After review and discussion, it was determined that the application was not complete, as the plan showing the existing property lacked buildings on the plan.

P. Monzione made a motion to reject the application as incomplete. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

This application will be continued to the next meeting May 3, 2012; notice fees will need to be paid again. The application fee is all set.

Case #Z12-05	**Variance**	**Springhaven Campground LLC**
1702 Mount Major Highway	**Map 65 Lot 17**	**Lakeshore Residential Zone**

On behalf of Springhaven Campground LLC, Thomas W. Varney, PE is requesting a variance to have travel trailers upgraded to park models for four season use.

J. Dever read the case into the record. Mr. Varney came forward to present this case.

The Board reviewed the application for completeness.

There was discussion concerning the location of campers on the existing conditions plan. Mr. Varney explained that they were not shown because they come and go. He also added that he is going to be withdrawing the application. If the application did go forward, he has labeled "sites" as "lots", which was another mistake. Because they are RV's and campers, they come and go. This application has 30 sites. The variance is to consider upgrading from an RV to a park model. There is a violation going on that he is in the middle of, and he does not think it is fair to come and present to the Board in the middle of that going on with the Building Inspector and the Town Attorney. This is part of the solution to the overall problem; upgrading to the park models is the nature of this variance request. There is too much prejudice with this; he is withdrawing the application in hopes that it can be resolved at another time. He presented a letter of withdrawal; he will not refile this and does not know if or how this will be resolved.

P. Monzione made a motion to accept Mr. Varney's withdrawal of this application. L. LaCourse seconded the motion.

S. Miller took exception to the statement that the Board would be prejudiced in this case; he has not made any decision one way or the other and is totally neutral. Mr. Varney stated that he was not saying that at all; he is involved in a dispute, and the people involved in the dispute are dealing with this. P. Monzione added that he had not taken the statement that this Board was prejudiced.

The vote on the above motion was five in favor, none opposed, and no abstentions.

VIII. OTHER BUSINESS

A. Previous Business: ZBA Fees update

J. Dever is working on updating the fee schedule; they will be going before the Board of Selectmen soon.

B. New Business: Election of Officers

T. Kinnon noted that in the past alternates have been able to ask questions during discussion; they could not participate in deliberation or voting. He feels that this is valuable to the alternate in gaining understanding and also makes the alternate more aware in the case of continuance if the alternate were made active. P. Monzione added that the public would have to be made aware of this so they did not think they needed six votes to carry.

S. Miller nominated Paul Monzione as chair. T. Kinnon seconded the motion. There were no votes in favor.

P. Monzione was nominated as Chair but he declined the nomination and led discussion of other options.

During discussion, T. Kinnon stated that he would be willing to take on the position; he explained his absenteeism stating that he had been available for the last two meetings held but did not attend because there was only one case on the agenda and he would have recused himself.

P. Monzione nominated T. Kinnon as chair. L. LaCourse seconded the motion which passed with four votes in favor, none opposed, and one abstention (T. Kinnon).

S. Miller nominated T. Morgan as vice chair. P. Monzione seconded the motion which passed with four votes in favor, none opposed, and one abstention (T. Morgan).

T. Kinnon nominated L. LaCourse as clerk. S. Miller seconded the motion.

L. LaCourse nominated S. Miller as clerk. P. Monzione seconded the motion which passed with four votes in favor, none opposed, and one abstention (L. LaCourse).

S. Miller voiced concern about adequately running the meeting in the absence of both the chair and vice chair. Members explained that this would not automatically be the case; the three members present could decide among themselves who would run the meeting. In all likelihood, any applicant would request continuance with just a three member board.

C. Minutes: February 2, 2012 and March 1, 2012

February 2, 2012

P. Monzione made a motion to approve the minutes as presented. T. Morgan seconded the motion which passed with three votes in favor, none opposed, and two abstentions (T. Kinnon and S. Miller).

March 1, 2011

T. Morgan made a motion to approve the minutes as presented. L. LaCourse seconded the motion which passed with three votes in favor, none opposed, and two abstentions (T. Kinnon and P. Monzione).

D. Correspondence: There was none

IX. ADJOURNMENT

T. Morgan made a motion to adjourn. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

The meeting adjourned at 9:45 p.m.

The next regular ZBA meeting will be held on May 3, 2012, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session