

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
APPROVED MEETING MINUTES
June 1, 2017**

The following members were present:

Steve Miller, Chairman
Paul LaRochelle, Vice-Chairman
Lou LaCourse, Clerk
Paul Monzione, Member
Tim Morgan, Member
Frank Rich, Alternate
Reuben Wentworth, Selectmen's Rep.

Others present:

John Dever, III, Code Enforcement Official
Jessica A. Call, Planning Secretary

I. CALL TO ORDER

Steve Miller called the meeting to order at 6:03 p.m.

II. APPOINTMENT OF ALTERNATES

Steve Miller stated there was no need to appoint any alternates because a full Board was present.

III. STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than the 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 would be considered. In the case of an appeal for a Variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a Special Exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance have been or will be met.

IV. APPROVAL OF THE AGENDA

Steve Miller asked John Dever, III, if there were any changes to the agenda, he stated that there was a memo dated 5/30/2017 from Nic Strong regarding new ZAC members and another memo dated 6/1/17 from Nic Strong regarding formatting updates in the 2017 Zoning Ordinance, which were added after the agenda had been posted.

**Paul Monzione moved to accept the agenda as amended.
Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

DISCUSSION:

Steve Miller explained to all of the applicants that there was a large caseload on the agenda and the policy of the ZBA had always been that no new case would be heard after 10:00 p.m. Paul Monziona stated that the probability of the Board hearing all cases was slim and suggested to Steve Miller that the applicants at the end of the agenda be afforded the opportunity to seek a continuance until the following month. Steve Miller stated that there would be no additional cost to the applicant. Steve Miller asked the audience if any applicant on tonight’s agenda wanted to reschedule. None of the applicants came forward.

Steve Miller asked the Board if they had a chance to review the legal opinion from Jim Sessler, Town Counsel, regarding voting and approving a Variance or Special Exception. The question was did the Board need a majority vote, for example 3 out of the 5, to approve a Variance or Special Exception, but more exactly, did the 3 out of the 5 have to be in agreement on all individual criteria. John Dever, III, stated no, that if each criteria passed, it did not matter if it was the same person who voted yes on all criteria.

V. REHEARING

Case # Z17-06 Thomas W. Varney, P.E., Agent & Regina Nadeau, Esq., Legal Counsel, for James J. & Lisa C. Hayes, Jr.	Map 38 Lot 50	Variance Lakeshore Residential (LR) 23 Richardson Drive
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Present were Thomas W. Varney, P.E., Agent, James J. and Lisa C. Hayes, Jr., Owners, and Regina Nadeau, Esq., Legal Counsel.

Steve Miller read their proposal into the record. Regina Nadeau, Esq., stated that the Hayes’ had been before the Board on a couple of occasions, and it was her understanding that the first case proposed removing an existing garage that encroached onto their neighbor’s property and replace it with a two-story 24’ x 24’ garage, and that was denied. She also stated that her client’s came back before the Board this past March for a second time and proposed a 22’ x 24’ one-story garage and the Board did not think it was a significant enough change, so the applicants withdrew. In April, the applicants came before the Board a third time with a further reduction of their application, but it was still not a significant change and the Board denied the application. Regina Nadeau, Esq., wanted to clarify that the purpose of tonight’s rehearing was that the Board was rehearing this case based on their own motion.

Regina Nadeau, Esq., confirmed with the Board that the application being heard was the application that was submitted at the April hearing, the Board agreed. Steve Miller interrupted Regina Nadeau, Esq., to ask the Board if they had all of the documents that pertained to the April application and whether the Board had to reiterate that the application was complete. Paul Monziona stated that they did not need any additional documentation and that they did not have to reiterate that the application was complete because that had been done at the April hearing.

Regina Nadeau, Esq., stated that the plan showed the existing site and what they were proposing, which was a 22’ x 24’ garage. Currently, there was a house on the shoreland side and the garage was on the roadside. The applicants had obtained a Shoreland permit, and they anticipated building their leach field septic system out by Route 11. The septic system would be further away from the lake and Mr. & Mrs. Hayes did not want to put a garage 100 feet or so from the house.

Regina Nadeau, Esq., pointed out that the tax map showed the private road dead ends at the North side of the lot and if you were coming in from the North, there were several shorefront lots before the applicant's lot which were significantly larger than theirs. The Hayes' had a smaller shorefront area and a smaller back area, which made that different from all the other lots. She stated that the current garage encroached 215 s.f. into the sideline setback and that the Hayes' proposal was to create a new building with a total of 240 s.f. feet into the setback, which was a net increase of 25 s.f., and remove the garage off of the abutter's property. She felt that this was a reasonable proposal and took into consideration the limitations of the property and overlapping regulations from the Town and the State with maintaining woodland buffers.

Regina Nadeau, Esq., shared that there were letters submitted in support of the application. One of the letters was from the prior owners of the lot the garage currently encroaches, and a letter from the new owner advocating for the granting of the Variance. As far as the spirit of the ordinance went, the impact to the population would be by removing the building, it got rid of some safety issues. Regina Nadeau, Esq., also noted that there were no comments from other Department Heads, and the granting of the Variance would solve an issue between lot owners. She felt that substantial justice would be served in the granting of this Variance because the applicants would be allowed to construct the garage, and it was substantially outweighed by the tangible benefit to the public. The loss would be the inability to have a one-story two-car garage, whereas the gain to the public was minimal and it would be consistent with public goals. Regina Nadeau, Esq., stated that there were special circumstances with the property, in that there were significant limitations, and believed that this was a reasonable use.

Paul Monzione asked that when looking at the locus map, to the North of the subject lot, was there a structure on Lot 49. Thomas W. Varney, P.E., stated that other than a boathouse, there was nothing on that lot. Paul Monzione asked if there was a structure on Lot 48, which was the back lot. Regina Nadeau, Esq., stated that there was no improvement on that lot, which was the lot that the garage encroached upon. Paul Monzione asked if that was a buildable lot. He then mentioned that because of the special circumstances, strict enforcement of the Zoning Ordinance may have no useful purpose because the Board was trying to prevent crowding on the sidelines, and if it was a buildable lot and someone wanted to put a structure on that lot, would the presence of the proposed garage interfere with the owner to build on the lot. Regina Nadeau, Esq., stated that she could not say for sure if that would be an issue. Paul Monzione was concerned that the garage would diminish the value of the lot, if it was sold some time in the future.

Regina Nadeau, Esq., stated that the notice that was sent out showed the encroachment as four (4) feet, but it was actually six (6) feet from the property line. Paul Monzione thought that it might create enough light and air between another structure if the abutter wanted to build a structure on their property. Frank Rich mentioned that the current owner had no objection. Paul Monzione noted that even though a current owner stated that they were in agreeance with a structure being built, the Board had to look at the fact of whether the structure diminished the property. Paul LaRochelle stated that on the other hand, if the structure was not removed, and the current owner was ok with it staying in place, what would take place when the lot was sold in the future; the lot would consist of a dilapidated structure. Regina Nadeau, Esq., stated that the record showed the garage in existence for 30 years, and under the law, if the abutter wanted to, they would be able to take ownership of the garage over the property line, but that was not what they wanted to do. Steve Miller addressed unnecessary hardship with Regina Nadeau, Esq. He asked if the applicant was entitled to a two car garage by statute or Master Plan, in other words, what if they wanted a three-car garage, would unnecessary hardship come into play if they owned three (3) Lamborghinis? He also mentioned that there could be some alternatives, like a one-car garage, a one and ½ car garage, or even a long garage to where the Hayes' would park one car in front of the other. Regina Nadeau, Esq., stated that she could not site to any law that someone was entitled to a two-car garage any more than she could site to any law that stated everyone was entitled to a four (4), three (3), or two (2) bedroom house. She asked what the Town had to gain by limiting the area with this particular application.

She also stated that having a garage in that district was allowed, but with building a long garage, it really was not a reasonable use of the property. Steve Miller asked Regina Nadeau, Esq., how would she determine what was a significant reduction, where they initially went with a 24' x 24' down to a 22' x 24'. Regina Nadeau, Esq., stated that because the March application was withdrawn, the significant reduction would be from the original garage with two stories, to a narrower garage with one story, thereby, knocking the use of the space by 50% and making it smaller, was a significant reduction. Steve Miller asked Regina Nadeau, Esq., what, if any, substantial harm would come by doing nothing. Regina Nadeau, Esq., stated that her client would be forced to try to rebuild the garage at the unusual angle it was situated on, and try to expand into property that was limited. Regina Nadeau, Esq., shared that when she went out to look at the property, she too had to turn around in the neighbor's driveway, like the Hayes' currently have to do.

Lou LaCourse asked for a clarification on the encroachment. He asked exactly how many feet they were encroaching on each side, because the Variance request was to permit a garage to be built 4 feet from each property line setback, which would appear that four feet of the setback was encroached upon. Regina Nadeau, Esq., stated that it was actually going to be five (5) feet from the property line, which would be less of an encroachment on either side. John Dever, III, confirmed that it was a five (5) foot encroachment. Frank Rich noted that the hearing in April that he attended never spoke about the other lots being a lot wider than the Hayes' lot and thanked Regina Nadeau, Esq., for adding that piece of important information, because it could be a special circumstance or a hardship and it distinguished it from the other lots. Frank Rich mentioned that the other lot owners on that street would probably not have the same issue as the Hayes', in terms of the setbacks. Regina Nadeau, Esq., stated that it appeared that the other lots were approximately 1 ½ times as wide as the Hayes'. Frank Rich asked Regina Nadeau, Esq., if she thought that having the smallest lot in that area was a hardship, she stated, yes.

Lou LaCourse asked if the Hayes' were currently using the garage. Lisa Hayes stated only as a shed. Lou LaCourse pointed out that they currently did not have a garage to house their vehicles, so if the Variance was not granted, there would not be much of a change. Regina Nadeau, Esq., stated that the garage was set up as a car garage and it was deteriorating, plus it was on someone else's land. John Dever, III, pointed out that the Hayes' were paying taxes on a garage and not on a garage that could only be used as a shed. Paul LaRochelle asked if the Hayes' were not parking their vehicles in the garage and only using it as a shed because it was unsafe, Mr. Hayes stated, yes, and shared that the garage had a dirt floor and the right side of the wall was caving in. Regina Nadeau, Esq., noted that this was going to be their primary residence at some point when they retired and it was not unreasonable to request this Variance.

Steve Miller opened up public input. No public input. Steve Miller closed public input.

DISCUSSION:

Steve Miller commented that there were other remedies that the owners could take. Paul Monzione stated that when the Board first had the application, and talked about applicants having a "second bite of the apple" after being denied, and after getting into the substance of the application and the more information he received, he thought that a two-car garage was a reasonable use. Steve Miller asked Paul Monzione if he had any concern about the Board setting a precedent. Paul Monzione stated, no, because each application was viewed and determined by the Board individually. Tim Morgan thought that the Board was not setting a precedent because it was a unique piece of property. Paul LaRochelle and Frank Rich also agreed with the uniqueness of the property.

Lou LaCourse stated that the variance **will not** be contrary to the public interest. He stated that originally, the application was for three (3) feet from the property line and he felt that was too much, and even at four (4) feet was too much, but now that it was five (5) feet from each property line, it made the project more palatable. All Board Members agreed.

Steve Miller stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He noted that it was properly zoned for a garage and thought that it was normative to have a two-car garage. Tim Morgan stated that the intent of the Master Plan was to avoid overcrowding and to make sure there was enough space and light between buildings. Paul Monziona thought that nothing about the Variance was going to adversely affect the zoning regulations. All Board Members agreed.

Paul LaRochelle stated that by granting the Variance, substantial justice **will** be done. He stated that this was a non-conforming garage partially located on an abutter’s property, which was being removed and the new garage would be completely on the Hayes’ lot. Tim Morgan thought that substantial justice would be done to the benefit of the applicant, which would out weight the loss to the town. All Board Members agreed.

Tim Morgan stated that the request **will** not diminish the value of the surrounding properties. He thought that the Variance would help the value of the surrounding properties by removing the deteriorating garage. All Board Members agreed.

Paul Monziona stated that for purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

He stated that there was a special configuration of the lot and would not serve the public if they enforced the ordinance. He also thought that a two-car garage on the lot in that particular neighborhood was a reasonable use. Steve Miller stated that initially he had an issue with the application concerning the entitlement of a two or three-car garage, but now thought the proposed use was a reasonable one because of the configuration of the lot. All Board Members agreed.

**Paul LaRochelle moved to grant the Variance for Case # Z17-06.
Paul Monziona seconded. Motion PASSED by a vote of (5-0-0).**

VI. CASE TABLED FROM MAY 4, 2017 MEETING

<p>Case # Z17-07 Matt Silva/Futuro Construction, Agent for Ronald Rubbico</p>	<p>Map 37 Lot 43</p>	<p>Variance Lakeshore Residential (LR) 8 Notla Lane</p>
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No one was present for this application. Matt Silva, Agent for Ronald Rubbico, contacted John Dever, III, Code Official, and requested this application be continued to the July 6, 2017, meeting in order for the NH DOT to be noticed in a timely fashion.

**Paul Monziona moved to table Case # Z17-07 to the following meeting to be held on July 6, 2017.
Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

VII. NEW APPLICATIONS

Case # Z17-08 Gary & Martha Gagnon	Map 37 Lot 42	Variance Lakeshore Residential (LR) 14 Notla Lane
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Present were Gary & Martha Gagnon, Owners.

**Lou LaCourse moved to accept application # Z17-08 as complete.
Tim Morgan seconded.**

Paul Monzione asked if the applicants were representing themselves, Gary Gagnon said that was correct. Steve Miller asked if an elevation sketch was required, John Dever, III, stated no.

Motion PASSED by a vote of (5-0-0).

Paul LaRochelle disclosed to the Board that he did a lot of work on Notla Lane, by removing snow and maintaining the road, and he had a client that lived at 22 Notla Lane. He asked if the Board or the applicants had any issues with him sitting on this case, no one had a problem.

Gary Gagnon shared that he and his wife bought their house last year and would like to make improvements to it. He had previously obtained a building permit for the house, but now needed a permit to add the deck and realized they needed a Variance in order to do so. Phase one was the house, phase two was the deck, and phase three would be the installation of a sliding door that lead out to the deck. He shared that the proposed deck was 10 feet wide and 21 feet long. He noted that there was an existing deck that continued beyond the corner of the house, about seven feet. He further shared with the Board that when they had drawings done up last year through the real estate agent, it showed that the house was within 40 feet, and when talking to John Dever, III, he recommended that it would be in their best interest to have a survey done. Upon reading the findings of the survey, the Gagnon's found that the house moved five (5) feet, which brought the existing deck within the 30 foot shoreland setback. The 10 foot deck the Gagnon's would like to put off the front was now five (5) feet into that range, which is why they were before the Board for a Variance. Gary Gagnon informed the Board that part of their plan below the deck was a 20' x 30' (600 s.f.) timberex type wood patio that they intended to remove completely and plant grass, which will add to the permeable surface of the property and improve drainage. He stated that he received a Shoreland permit from the State that was approved.

Steve Miller asked Mr. Gagnon what the hardship was of having the deck conform to the ordinance. Gary Gagnon stated that a smaller deck would not accommodate for patio furniture, and that was their primary deck, now that they were getting rid of the other deck and planting grass. Tim Morgan referred to the PBN, and it looked like the State accepted the Shoreland permit and it expired in 2022. Tim Morgan also pointed out that the Shoreland permit allowed Mr. Gagnon to encroach into the State's setback and asked if it stated anywhere on the permit what the encroachment was. Gary Gagnon stated that he sent the State the same information that he sent to the Town for the Variance and thought it stated that somewhere in the paperwork. Tim Morgan confirmed with Mr. Gagnon that the State approved what he was proposing, Mr. Gagnon stated, yes.

Paul Monzione needed some clarification about the photographs. He referred to the patio and confirmed that it was going to be eliminated, Mr. Gagnon agreed. Then he asked about the second photo that depicted a deck that looked like it was level with the first floor of the house, and asked if that was the deck Mr. Gagnon was referring to, Mr. Gagnon stated, no, that deck was not changing. Paul Monzione asked if the proposed deck was going to extend the same amount that the current deck was, Mr. Gagnon stated, no, that it would be three (3)

feet further. Paul Monzione asked how much the deck would encroach into the Town's 30 foot setback, Mr. Gagnon stated, five (5) feet.

Tim Morgan asked Mr. Gagnon where the deck would end in relation to the one they were removing. Gary Gagnon stated that it was substantially shorter. Paul Monzione asked John Dever, III, if the setbacks for the Town were the same as the State, he stated, no, the State had a 50 foot setback. John Dever, III, further shared that in circumstances like this, to where their house was already encroaching into their setback, the State would allow a deck to extend from the front of the structure 12 feet out. Frank Rich noted that they were making a less pervious area by removing the patio. He also asked where the septic system was located because he did not see it noted on the plan, and wanted to make sure he had one. Gary Gagnon stated that the septic system was a dry well and was located on the other side of the house. Frank Rich asked about the downstairs door and would the new deck be over the door, Mr. Gagnon stated, no. Frank Rich asked if there was going to be a walkway heading to the door. Gary Gagnon shared that originally there was a sliding glass door and had since been replaced. There was a concrete slab in front of the door, but planned on putting some landscape tiles there also.

Steve Miller shared that the Conservation Commission had no issue with Mr. Gagnon planting grass under the deck and would like to see that remain in place. Steve Miller asked Mr. Gagnon if he would be opposed to making that a stipulation if the Variance was granted, he stated he would not be opposed. Paul Monzione shared that there was another concern by the Conservation Commission in which they had a problem with runoff during construction, which had to be monitored during and after construction. Paul Monzione asked Mr. Gagnon if he would be agreeable, if the Variance was granted, that it be a condition of approval to monitor any runoff issues. Gary Gagnon stated that there were four (4) footings going in and the grass would act as a barrier, and he did not have an issue. Frank Rich suggested installing silt fencing. Lou LaCourse asked John Dever, III, if the current patio was considered impervious, he stated, yes. Gary Gagnon wanted to let the Board know that this project was an improvement to the neighborhood, his neighbors were happy, and this was a benefit to all parties.

Steve Miller opened up public input. No public input. Steve Miller closed public input.

DISCUSSION: No further discussion.

Steve Miller stated that the variance **will not** be contrary to the public interest. He noted that the applicants were improving their home and the landscaping, they were protecting the environment, and were entitled to be able to walk freely around their patio furniture. All Board Members agreed.

Paul LaRochelle stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that by taking away the material decking and replacing it with grass, it would be an improvement to the property. All Board Members agreed.

Tim Morgan stated that by granting the variance, substantial justice **will** be done. He thought that the benefit to the applicant far outweighed any detriment to the public. Paul Monzione thought that the small encroachment into the shoreland setback did not pose any adverse consequence to the Town, and the State agreed by issuing a permit. All Board Members agreed.

Paul Monzione stated that the request **will** not diminish the value of the surrounding properties. He stated that there were no abutters present to provide any information or evidence that by doing this, the value of surrounding properties would be in any way diminished, and in fact, this would be an overall improvement to the lot. All Board Members agreed.

Lou LaCourse stated that for purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

Paul Monziona pointed out that one of the special conditions of the property was that part of the house was already encroaching into the shoreland setback, and the state had agreed and issued a permit.

Tim Morgan moved to grant the Variance for Case # Z17-08. Paul Monziona requested that Tim Morgan amend his motion to include the conditions requested by the Conservation Commission in which they required the monitoring of runoff during the construction of the deck. Steve Miller further requested that Tim Morgan amend his motion to include the Conservation Commission’s condition to plant grass where the patio was, and that no further building took place under the deck. Steve Miller took note that Mr. Gagnon was in agreeance of the conditions. Tim Morgan agreed.

Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

Case # Z17-09 Steven J. Smith, Jr., LLS, Agent for Donald R. & Darlene E. Demers	Map 65 Lot 52	Variance Lakeshore Residential (LR) 36 Elm Street
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Present were Steven J. Smith, Jr., LLS, Agent, and Donald R. & Darlene E. Demers, Owners.

Lou LaCourse moved to accept application # Z17-09 as complete.

Paul Monziona seconded. Motion PASSED by a vote of (5-0-0).

Steven J. Smith, Jr., LLS, stated that he was requesting a Variance for side setbacks that involved Tax Map 65 Lot 49 and Lot 52, plus a portion of the former right-of-way which was known as Alpine Way in order to build a two-story garage. Their request would be subject to a merger of Lots 49, 52, and the right-of-way portion of Alpine Way, and also obtaining a shoreland approval from DES. He shared that the Demers’ could not place a garage on Lot 49 because it was designated as wetlands. The proposed garage was similar in appearance with their neighbor’s and would line up with their garage, because there was a limitation with the property due to the fact that there were wetlands and the lot was an odd shape. A new septic system was approved and constructed on the property to support the existing house. Steven J. Smith, Jr., LLS, noted that he had a letter from an abutter in favor of the Variance. He stated that the proposed use was allowed in that district and the garage would be no closer to the property line than the adjacent lots. He noted that the subject lot and adjacent lots were substandard lots, because the current structures did not meet regulations. Steven J. Smith, Jr., LLS, believed that if Lot 49 did not have wetlands on it, they would be able to put the garage on it, therefore, would not need a Variance.

Tim Morgan asked if the access was off Elm Street, Steven J. Smith, Jr., LLS, stated, yes. He then asked if a fire vehicle needed to get to the house, how would they get there. Steven J. Smith, Jr., LLS, stated they could either come in from the driveway or from the Alpine Way access. Frank Rich mentioned that he did not see any building plans submitted. Steven J. Smith, Jr., LLS, stated that he did not submit a building plan, that’s why he took the pictures. Frank Rich noted that what he was proposing was considerably bigger than what was depicted in the pictures. Steven J. Smith, Jr., LLS, stated that it was longer and deeper, plus it was two-stories. Frank Rich stated that they really did not know what it looked like, and then asked how high the elevation would be. Donald Demers stated it would be 27 feet to the peak. Paul LaRochelle asked what the elevation

was on their neighbor's garage. Paul Monzione was looking for architectural elevation exterior drawings of what it would look like.

Steve Miller noted that there was a comment from the Fire Department, which stated that they reserved the right to review the actual building plans for fire code compliance. Steven J. Smith, Jr., LLS, stated that when the Demers' applied for a building permit, that they would have to submit one at that time. Steve Miller asked the Board if they had approved a building without reviewing a plan for it. Paul Monzione stated that sometimes a plan depicted how the structure would be situated on the lot, and if it also gave dimensions of the structure, it might suffice. Steve Miller asked what would happen if the Demers' changed their minds and wanted something different. Paul Monzione stated that the Demers' could not change the plans per State Statute; the applicants were restricted to what was presented in the application. Frank Rich noted that the garage would be 27 feet high, but wanted to know what way the ridges would lay. Steven J. Smith, Jr., LLS, explained that the ridges would be going the opposite way than the neighbor's.

Paul LaRochelle asked what the second floor was going to be, Steven J. Smith, Jr., LLS, stated it would be for storage. Paul LaRochelle then asked if there was going to be running water, Steven J. Smith, Jr., LLS, stated that they were putting in a laundry area. Steve Miller asked if they were putting in a bathroom and electricity, Steven J. Smith, Jr., LLS, stated, they were not putting in a bathroom, but they needed to run electricity.

Paul LaRochelle asked if the Demers' were going to move the shed up higher on the property, Mr. Demers stated, if they kept it, they would move it so it would meet setback requirements. Paul Monzione asked if the Demers' currently had a garage, Mr. Demers stated, no. Paul Monzione then asked if Mr. Demers had a chance to see Deputy Chief Turcotte's letter, Steven J. Smith, Jr., LLS, stated, he did not. Paul Monzione was concerned because the letter stated that "The fire departments understanding that this proposed garage is approximately 28' by 36'. Will this impose access to the residential structure? It appears there is approximately 75' from the front of the garage to the front of the house. This may pose an issue for limited access for emergency vehicles." Steven J. Smith, Jr., LLS, stated, the front of the garage to the closest corner of the house was actually 80'. Paul Monzione stated that it looked like Deputy Chief Turcotte was raising concerns about fire safety and the ability to get emergency vehicles onto the property. Paul Monzione thought that if the Variance was granted, that a condition of approval should include satisfying the Fire Department's concern about emergency vehicles and safety. John Dever, III, stated that Alpine Way went into an area of the abutting property that was drivable up to the Demers' lot and there was a lot of room for fire access. Frank Rich asked who owned the road, John Dever, III, stated that was under joint ownership and could not be built upon. Lou LaCourse asked if the right-of-way was now defunct, John Dever, III, stated that through a purchase from the other members, the Demers' had purchased that portion of the right-of-way that crossed their property. Paul Monzione wanted to confirm that the Board was deciding on the sideline setbacks and pointed out that the encroachment on the Waystack side property line would be only about 3.5' into the setback and on the other side it would only be a little over 2', Steven J. Smith, Jr., LLS, stated, yes. Lou LaCourse asked if there was a reason why the garage could not be 22' wide because then they would not be inside the setback at all, Steven J. Smith, Jr., LLS, stated that it would be tough to have a two-car garage only being 22' wide because it would be difficult to maneuver getting out of their cars. Steve Miller thought that the garage looked like it could be a 2,000 s.f. house and the abutters who have not had an opportunity to see what the garage would look like, are really not able to make an informed decision as to whether or not they approved what was being built in their neighborhood. Steven J. Smith, Jr., LLS, stated that it was going to be similar to the neighbor's garage. Steve Miller stated that the long term plan was not to turn the garage into another home. Lou LaCourse stated that they could not do that because they would be in violation of the Zoning Ordinance. Steven J. Smith, Jr., LLS, stated that it would be impossible to turn it into a residence because they would have to go through the Building Department to obtain a permit for a garage and if they did anything different, the permit would not be approved. Paul LaRochelle wanted to clarify that according to the pictures submitted, the Demers' would be building their

garage similar to the neighbor's even though their garage was larger, it had two overhead doors, window dormers, an asphalt roof, the gable end would be the entrance and exit, and it would be facing in the opposite direction, Steven J. Smith, Jr., LLS, agreed.

Steve Miller opened public input.

Edward Waystack, an abutter, came to the table to speak. He had no objection to the granting of the Variance and felt that his property would not be diminished. The way things were now, the Demers' parked out on the lawn, and since they were unable to park safely, he was concerned about his grandchildren playing outside in his yard. Mr. Waystack also shared that the Demers' lived on the property and would soon be re-siding their house, replacing the windows, and they just put on a shingled roof. Mr. Waystack stated that he did not have the opportunity to see the building plans, but he felt since Mr. Demers had done such a great job fixing up his property, he was sure the garage would look beautiful, and had no worries.

Steven J. Smith, Jr., LLS, stated that he understood that the Fire Department needed to be satisfied and their request was appropriate, and if the Board did grant this application, he would submit a Lot Merger application in order for the garage to take place.

Steve Miller closed public input.

DISCUSSION:

Lou LaCourse was hesitant to go forward without see a drawing of the garage. John Dever, III, stated that having an elevation plan was not part of the checklist and the applicant's agreement in their testimony was legally binding if they committed to a particular course of action. Steve Miller asked John Dever, III, if a Variance had ever been denied after an elevation plan was submitted, John Dever, III, stated, no. Frank Rich stated that the Board looked at the plans all the time for aesthetics and they needed to look out for the neighbors, how could an elevation plan not be a requirement. John Dever, III, stated that it was something that the Board strongly recommended. Frank Rich was concerned that if the Fire, Highway, and Police Departments had comments to an application, why was the applicant not informed. Paul Monzione pointed out that the comments were available in the Planning Department and it was not uncommon for them to not know the Departments had commented because sometimes they came in last minute. John Dever, III, added that what the Board had done in the past, the concerns became a condition of approval that it would be addressed. Frank Rich referred to Lou LaCourse's comment that he was uncomfortable with granting the Variance, and was it not the job of the Board to protect everyone. Paul LaRochelle stated that they had approved applications without elevations in the past. Paul Monzione stated that there were height requirements and elevations they need to follow, but there were times they had made decisions on applications even though they had not seen any pictures.

Steve Miller questioned what was a "similar representation", although he understood what was being represented, how would "similar to" be enforced. John Dever, III, stated that if it was in keeping with the surrounding architectural style, it could be enforced. Paul Monzione stated that he had a problem because they were expanding their footprint as compared to Mr. Waystack's garage. John Dever, III, noted in that neighborhood, all of the buildings were very similar to the architectural style that was depicted in photo #3. Paul Monzione took Mr. Dever's comment into consideration and then added the fact that the applicant represented on the record that the configuration was going a different way, and that would be sufficient enough to fight in court.

Tim Morgan stated that the variance **will not** be contrary to the public interest. He thought that the application addressed the safety and general welfare of the public by improving the landscape and protecting the environment. All Board Members agreed.

Paul Monziona stated that the request **was** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He mentioned their discussion about the Master Plan addressing the health, safety, and rural character of the town and it should be the goal of what zoning did in the Town. He thought this was what this structure was proposing as long as the Fire Department's requirements were adhered to. All agreed, with Steve Miller abstaining because he did not have enough information.

Lou LaCourse stated that by granting the variance, substantial justice **will** be done. Steve Miller thought that substantial justice would be done because what was asked for was a two-car garage placed in the only reasonable area that it could be placed based on the constraints of DES. Tim Morgan thought that the benefit to the applicant outweighed any detriment to the Town. Paul Monziona thought that the minor encroachments into two setbacks would not adversely affect the purpose of the Zoning Ordinance or the Town. All Board Members agreed.

Steve Miller stated that the request **will** not diminish the value of the surrounding properties. He noted that there was no testimony or any evidence submitted that there would be any adverse impact on the values of surrounding properties. On the other hand, the closest abutter did give testimony in favor of the Variance. All Board Members agreed.

Paul LaRochelle stated that for purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

He thought that the lot was narrow, they had wetlands, there was a shed that exists currently and was in disrepair, and the garage would make it better for The Demers' to maintain the property. Tim Morgan mentioned that garages were allowed in the district and the shape of the lot was unusual. Paul Monziona mentioned that the wetlands on the property contributed to the special condition of the property and the encroachment into the side setbacks did not make the property unsafe. He also mentioned that the building of the garage might affect the issue of safety, because even if the garage was two or three feet smaller, the Fire Department might still have the same concern. All agreed except for Lou LaCourse who disagreed on the basis that he thought there was no hardship even though it was a narrow lot, a garage could be built smaller to fit into the boundaries and it would make ample room for the fire equipment to get between the houses.

Paul Monziona moved to grant the Variance for Case # Z17-09, with the following conditions:

- 1. Granting of the Variance be subject to the applicant merging all three lots as represented, and in the absence of the merger, the Variance should not be granted;**
- 2. Obtaining a shoreland permit from DES;**
- 3. The architectural finished product be in keeping with the architectural depiction in photo #3 of the application which depicts the neighbor's garage; and**
- 4. The concerns of the Alton Fire Department with regard to the safety and the ability of emergency vehicles and access to property be satisfied.**

John Dever, III, offered an addition to the motion: "The architectural style will be similar and compatible with the neighboring garage depicted in photo #3 submitted with the application".

Paul Monzione wanted John Dever, III's, addition to be put in place of his statement and be part of the motion.

Tim Morgan seconded. Motion PASSED by a vote of (4-1-0) (Lou LaCourse was against.)

Case # Z17-10 Bryan L. Bailey, LLS, Agent for Randall Q. & Sarah Cail	Map 21 Lot 6	Variance Lakeshore Residential (LR) Hopewell Road/Brickyard Cove Road
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Present were Bryan L. Bailey, LLS, Agent, and Randall Q. Cail, Owner.

Paul Monzione moved to accept application # Z17-10 as complete.

Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

Bryan L. Bailey, LLS, explained that Mr. Cail was seeking a Variance to construct a 40' x 100' garage/barn on a triangular parcel of land to where that parcel did not have a principal dwelling unit. He shared that the principal residence was on the abutting property, which was owned by Mr. Cail. He made note that there would be no running water in the building, but would have electricity and heat. The architectural drawings that were submitted showed it was a New England barn style structure with a cupola in the center of it. Paul Monzione interrupted to state that he thought they did not need a Variance for such a proposal because the Planning Board had adopted a new regulation to allow a garage to be built on a lot without a principal residence. John Dever, III, stated that regulation was allowed in all zones, except for the Lakeshore Residential District. Bryan L. Bailey, LLS, shared that Mr. Cail had a significant amount of lakeside property and had several boats and dock facilities. Mr. Cail's principal dwelling lot was on an extremely steep lot. When heading down Hopewell Road to the home it was about a 15 % slope, but once on the lakeshore shelf, it was flat. Bryan L. Bailey, LLS, thought that those criteria met special conditions.

Bryan L. Bailey, LLS, stated that the garage/barn would be used as an accessory building only and would not have any amenities to allow the structure to be occupied as a residential dwelling. He also stated that the proposed structure was adjacent to the principal dwelling home and it would be more likely that the property would not be sold. Mr. Cail would be able to better accommodate the needs of his waterfront home and living style, given that the steep slopes on the adjacent home lot prevented construction of an adequate garage/barn. The proposed garage/barn would be aesthetically pleasing and would provide increased property values and additional taxation values with no impact on municipal services for school.

Tim Morgan asked why Mr. Cail did not go before the Planning Board for a Lot Line Adjustment. Bryan L. Bailey, LLS, stated that they did go before the Planning Board and were approved for a Lot Line Adjustment. Lot 6 was recently subject to boundary line adjustment between the principal dwelling and Lot 6-1 where both of the lots, which have principal dwellings, were made significantly larger. Lot 6 used to have 6 acres of land and was reduced to 2.38 acres, and it had no frontage along the water, nor did it even have it today; it was a back lot. Tim Morgan asked if that lot was previously part of Lot 6-1; Bryan L. Bailey, LLS, stated, no. He stated that parts of Lot 21-5 as it exists now were recently annexed to it from Lot 6. Paul Monzione asked if Bryan L. Bailey, LLS, had a tax map with a depiction of the three lots in relation to each other. Paul Monzione stated that Mr. Cail was using the garage/barn as an accessory structure to one of the lakefront homes, and when the Lot Line Adjustment was configured, was there some way to make the adjustment so that the area to where the garage/barn was to be built could have become part of the lot to where the principal structure was located. Bryan L. Bailey, LLS, shared that it probably could have occurred. At Lot 5 there was a principal dwelling and there was an accessory garage on that lot already located near the road, which was built within the last year. Randall Cail stated that his lot was not part of the Bahre subdivision and was located just outside of it. Frank

Rich noted that Mr. Cail just built a garage on the lot with his primary residence to use for parking his vehicles, he then asked what would the garage/barn be used for. Randall Cail stated it would be used for a collection of boats. He further stated that he had an additional barn out on Governor's Island that he just sold, so he now needed storage for the boats that were being housed there.

Paul Monzione referred to one of the photographs that showed the area of the proposed garage/barn to the left, and asked if it was going to be built in the woods, Bryan L. Bailey, LLS, stated, yes. Paul Monzione asked if it was then going to be screened by the woods or would it be seen when driving down the road. Randall Cail stated that you would not be able to see it from the road except for in the winter when the trees were bare. Lou LaCourse asked what the overall height of the barn was, Bryan L. Bailey, LLS, stated it was 16' 8" of vertical side and about 10'-12' to the peak not including the cupola, but it did comply with the 35' maximum height requirement. Paul LaRoche asked if they had talked to the Road Agent about a driveway permit, Bryan L. Bailey, LLS, stated, not yet. Frank Rich asked if Mr. Cail would be using ClearSpan or post and beam, Bryan L. Bailey, LLS, stated ClearSpan, it would have wood siding, and a steel roof, but was not sure of what color roof yet. Paul Monzione asked if Bryan L. Bailey, LLS, had the opportunity to review the Department Head Reviews, Bryan L. Bailey, LLS, stated, no. Paul Monzione stated that the Conservation Committee was concerned for construction on a 20% slope. Bryan L. Bailey, LLS, stated that the 20% was on the downside of the garage/barn, but the building itself was on a flat slope. Paul Monzione also shared that Deputy Chief Turcotte from the Fire Department had some concerns requiring compliance with the RSA light safety code. Bryan L. Bailey, LLS, stated that they would be addressed anyways through the building permit. Paul Monzione read from their comments which stated: "After reviewing the request for Z17-10 and consulting NFPA 1 (Fire Code, 2009 Edition), NFPA 101 (Life Safety Code, 2015 Edition), State Fire RSA's, and applicable town ordinances. The fire departments understanding that this proposed garage will be for residential use only. If there is a request for change of use to other than residential, there may be additional codes to be followed by the owner/occupant. Is there any building plans besides the elevation plan? The fire department reserves the right to review the actual building plans for Fire Code compliance. Is there a 911 address for this property? The online property database does not show one, nor is there one listed on the application for the variance. If not, one needs to be assigned." Bryan L. Bailey, LLS, stated they were waiting for the assignment.

Steve Miller opened up public input. No public input. Steve Miller closed public input.

DISCUSSION: None.

Paul Monzione stated that the variance **will not** be contrary to the public interest. He thought that it was a large structure, but it would be hidden by a tree line buffer. Steve Miller thought that the potential value was significant and had no issues with the design or the size of the structure on the lot. Tim Morgan thought that the warrant article separated Lakeshore Residential and made it require a Special Exception because there was a concern about the aesthetics, and he did not see that this would be an issue. All Board Members agreed.

Lou LaCourse stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that there were large lots, a well-designed building that would fit well in the area in which it was proposed, and thought that it would increase the value of the surrounding properties, although he had no proof of that fact in one way or another. All Board Members agreed.

Steve Miller stated that by granting the variance, substantial justice **will** be done. He stated that due to the nature of the neighborhood, it was not unusual to have multiple boats or docks and things of that nature, and based on that type of property usage, it was not an unreasonable request. Tim Morgan thought that the benefit

to the applicant outweighed any detriment to the Town. Paul Monzione pointed out that one of things that had to be kept in mind was that the structure could be built on the lot without a Variance, if the applicant also had a house. All Board Members agreed.

Paul LaRochelle stated that the request **will** not diminish the value of the surrounding properties. He thought that it would be an improvement and would fit into the surrounding neighborhood. It would bring up the value of properties in the surrounding area and would make it a good tax revenue for the Town. Tim Morgan stated there was no testimony with respect to property values. All Board Members agreed.

Tim Morgan stated that for purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

He noted that as the applicant pointed out, a good portion of the surrounding properties had an inclination of 20% or more and it appeared to be the only place the garage/barn could be constructed. He also thought that having a boathouse near the lake was a reasonable use. Paul Monzione thought that to strictly abide by the Zoning Ordinance in this case was not necessary and pointed out that the Lakeshore Residential District was a protected part of town because residents did not want to see several storage type buildings in that area, but due to the location and the design, it posed no threat. All Board Members agreed.

Lou LaCourse moved to grant the Variance for Case # Z17-10. Paul Monzione suggested Lou LaCourse amend his motion to include the Fire Department’s concerns about not having appropriate conditions and the concerns from the Highway Department to obtain a driveway permit. Steve Miller suggested that Lou LaCourse further amend his motion to include that the structure was not to be used as habitation or commercial use. Lou LaCourse agreed Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).

<p>Case # Z17-11 David Livingston</p>	<p>Map 56 Lot 41</p>	<p>Special Exception Residential (R) 210 Woodlands Road</p>
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Present was David Livingston, Owner.

Paul Monzione moved to accept application # Z17-11 as complete.

Tim Morgan mentioned that there was a notation in the file about an ongoing investigation with DES, and could the Board go forward with hearing the application. Lou LaCourse asked if the boathouse was already constructed. Paul Monzione stated that they would have to accept the application as complete before they answered Lou LaCourse’s questions. Tim Morgan asked John Dever, III, how the investigation impacted any action of the Board. John Dever, III, stated that the options were to grant the request conditional upon resolution. Tim Morgan stated that if the Board granted the request, could the applicant begin to undertake construction despite the fact that the DES had an ongoing investigation. John Dever, III, stated that construction was put to a stop because Mr. Livingston did not apply for a building permit, and that was the issue of the complaint. He further stated that DES might order Mr. Livingston to reduce the height of the boathouse to what was originally granted, because he built it taller than what was approved. Steve Miller noted that the issue now was whether the application was complete and whether the DES investigation was a requirement for

the case to go forward or not. Paul Monzione thought that the Board should go forward and second the motion, then they would be able to decide how to proceed.

Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).

Steve Miller asked the Board if they wanted to go forward with the application, table the application, or if there were any other alternatives. Tim Morgan was concerned about the jurisdictional aspects of this case because DES was undertaking an investigation, and what authority did the Board have. John Dever, III, stated that the Board pre-empted height restrictions, and had Mr. Livingston come in with a Special Exception application and requested to replace the boathouse, and since the permit from DES was for the original configuration, it would have been the same height Mr. Livingston would have applied for with the ZBA. Tim Morgan noted that the height of the boathouse not only exceeded the Town's Ordinance, but DES's approval also. He then asked what administrative actions could DES take to remediate the problem if they decided that the height of the boathouse was a violation. John Dever, III, stated that they would more than likely order Mr. Livingston to reduce it to the height to which it was approved.

Paul LaRochelle asked if construction was stopped and by whom. John Dever, III, stated it was stopped by him because there was no building permit pulled. Paul Monzione stated that the applicant built a boathouse without a building permit and without coming before the ZBA to replace a grandfathered structure, but went ahead and tore down the damaged boathouse and constructed another one without any approval from any authorities. John Dever, III, stated that he did obtain a permit from DES, but built it taller than what was approved. Paul Monzione pointed out that Mr. Livingston was before the Board now to ask for their approval after the fact. He further pointed out that the application was not asking to have a boathouse built higher than the height regulation, but he was applying to replace a boathouse in-kind.

Paul LaRochelle asked if Mr. Livingston would be ordered to remove the roof structure. John Dever, III, stated that in order for him to comply with the regulations, it would more than likely have to occur. Steve Miller thought that Mr. Livingston should come before Board after the DES investigation was completed because if DES had any type of adjudication, the Board might not even have a decision to make in one way or another. He further stated that he preferred to table the application until the DES investigation was remedied. Tim Morgan agreed with Steve Miller. Paul Monzione understood the point of wanting to see what DES did first, because it could change what the application looked like and he agreed with Steve Miller. Paul Monzione asked if the approval from DES required the boathouse to be built in-kind, John Dever, III, stated yes, that there could be no change in configuration.

David Livingston stated that he did not get a building permit because he did not know that he needed to. In getting DES approval, he stated he did not know he needed approval from the Town. He stated that when John Dever, III, came to the job site, he was informed that he had to stop construction. Steve Miller asked how did the contractor not know he needed a permit from the Town, Mr. Livingston could not speak for the contractor. Mr. Livingston then shared that there were only a few towns that required a permit to build over the water. Frank Rich pointed out that until DES made a decision, John Dever, III, could not give him a building permit. David Livingston stated that DES could not make a decision because the boathouse was not completed. Frank Rich disagreed and asked if he had spoken to anyone at DES. David Livingston stated that he sent DES a letter, but had not received a response. Paul Monzione asked if the boathouse was entirely in the lake, Mr. Livingston stated, yes. Paul Monzione thought it made a big difference because he was under the impression that DES should have authority to render a decision on this issue because it was entirely in the water.

Paul Monzione moved to table application # Z17-11 until a determination was made by DES as to what needed to be done. Also, during that time, the Board would have time to be able to consult

**with Town Counsel about the issues Tim Morgan raised to make sure thereafter the Board needed to play a role in this application beyond the determination from DES.
Tim Morgan seconded.**

DISCUSSION:

John Dever, III, asked what date this application was tabled to. Steve Miller stated it was being held until the Board heard that DES had made a determination and they could go forward. Paul Monzione was not sure if the Board had legal authority to grant a Special Exception on a boathouse, because it was located entirely on the lake, and therefore thought DES would have the authority. Mr. Livingston stated that John Dever, III, stated the Town of Alton's height restriction took precedent over any other regulation. Paul LaRochelle stated that the big issue was that DES was still in the process of their investigations.

Motion PASSED by a vote of (5-0-0).

David Livingston asked who he needed to report to once he heard from DES, Paul Monzione stated he should report to John Dever, III.

Case # Z17-12 Michael Copensky, Agent for John Bomhoff	Map 50 Lot 15	Variance Lakeshore Residential (LR) 13 Loon Cove Road
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Present was Michael Copensky, Agent for John Bomhoff.

**Lou LaCourse moved to accept application # Z17-12 as complete.
Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).**

Michael Copensky stated that Mr. Bomhoff was looking to place the garage where a house used to sit, which burnt down this past October. He further mentioned that the placement of the garage had changed and they were now requesting to have the house built where they wanted to build the garage.

Lou LaCourse asked how much did the house encroach into the setback, Mr. Copensky was not sure if it was three (3) feet, but thought it was in the application packet presented to the Board. He stated that the property line began in the middle of Loon Cove Road and the 50-foot setback was at the top of the property before the hill went to the water. Lou LaCourse noted that by building the garage, it was going to have less of an encroachment than the house did. He also mentioned that the house used to be a garage, and asked if that was a change of use, John Dever, III, stated, no, because it was still a residential lot and it did not have to follow the regulations for a change of use.

Paul Monzione mentioned that the house was going to encroach 17' into the 25' setback. Steve Miller asked if there were any alternatives in order to not encroach that much into the setback, Mr. Copensky stated no, because of the size of the structure. Steve Miller asked what the size of the structure was, Mr. Copensky believed that it was 26' x 40'. Paul Monzione asked how wide the right-of-way was, John Dever, III, stated that the right-of-way was conveyed to the Town from the State, it was a four rod right-of-way, and was 66' wide because it used to be the State road. He further noted that because Mr. Bomhoff's property line ran to the center of Loon Cove Road, the Town owned the right to pass on it. Steve Miller asked if the Town had any issues with this proposal, John Dever, III, stated that the Highway Department had no concerns. Paul Monzione pointed out that since the encroachment does not affect the travel lane, and if the Town wanted to build a wider

road, they could take that land and then they would have an issue with a structure being 17' closer to the road's travel lane.

Steve Miller opened up public input. No public input. Steve Miller closed public input.

DISCUSSION: Tim Morgan mentioned that the risk of building into the setback was on the applicant.

Lou LaCourse stated that the variance **will not** be contrary to the public interest. He stated that there was a house there previously and the garage was going to be less non-conforming. He also noted that the right-of-way ran deep into the property, but the garage would be consistently a long distance from the edge of the road itself. Steve Miller noted that the Town did not have any concerns and that the Town did own the right-of way. Tim Morgan agreed that the right-of-way setback was intended to avoid congestion, but the right-of-way was large and did not think it was contrary to public interest. Paul Monziona noted that the Conservation Commission was concerned that the proposed plan would not meet the Shoreland permitting rules, but John Dever, III, represented that the plan would comply with those rules. All Board Members agreed.

Steve Miller stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that there was no evidence or testimony presented that there were any safety issues. All Board Members agreed.

Paul LaRochelle stated that by granting the variance, substantial justice **will** be done. He stated that the garage would not interfere with the driveway and would be an improvement. He also thought that having the garage where they intended to build the house initially and vice versa, was a good spot for both structures. Tim Morgan thought that the benefit to the applicant outweighed any detriment to the public. Paul Monziona thought that considering the width of the right-of-way and where the edge of the travel way was, substantial justice was being done. All Board Members agreed.

Tim Morgan stated that the request **will** not diminish the value of the surrounding properties. He stated that there was no testimony from abutters with respect to the value of surrounding properties. All Board Members agreed.

Paul Monziona stated that for purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

He stated that the Board considered the fact that there were non-conforming structures on the property and thought it was a special condition of the property. Another special condition was that there was an extraordinarily wide right-of-way. Steve Miller thought that it was reasonable to request the garage to be built near the road and the house to be built near the shoreline. All Board Members agreed.

Lou LaCourse moved to grant the Variance for Case # Z17-12.

Paul LaRochelle seconded. Motion PASSED by a vote of (5-0-0).

Case # Z17-13 Christopher L. Boldt, Esq., Agent for Timothy V. Long & Mehrnaz Aghvami- Long	Map 64 Lot 17	Special Exception Lakeshore Residential (LR) 158 Smith Point Road
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Present were Christopher L. Boldt, Esq., Agent and Timothy V. Long, Owner.

Paul Monzione moved to accept application #'s Z17-13 & Z17-14 as complete and noted that the exhibits applied to both applications.

Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

It was decided by the applicant and their agent that Cases # Z17-13 and Z17-14 would be heard simultaneously.

Christopher L. Boldt, Esq., explained where the structures were located on the lot. The lake was located at the top of the plan, Smith Point Road was in the middle, the shoreland lot was Lot 17, and the inland lot was Lot 25. The shoreland lot, Lot 17, was deemed non-conforming because it had three (3) structures on it. Two (2) of those structures were historic cottages, one on the shoreland and one near the road, and the third structure was also a historic structure, but had been expanded over the years. The inland lot, Lot 25, had nothing on it. Christopher L. Boldt, Esq., was told that it was a Town owned road in fee, which meant that the Town owned the dirt, rather than owning an easement over the dirt. The request for the garage was in compliance with the setback, but only on the only structure on the back lot that would be allowed if they added another house on that lot. He stated that they already acquired a DES Shoreland permit and a permit for the construction of the septic system. The plan showed that at the edge of the deck was the 50' setback line from the water and that was important because they were not going to encroach any further than that line in the proposed conditions plan. On the second page of the plan, it showed the existing structure and the proposed structure, and because they were not building in the exact same footprint, they needed a Special Exception. It was not a new use, it would not have an increased detrimental impact to the abutters, and it would not increase any non-conformance of the building or lot coverage.

Christopher L. Boldt, Esq., referred to the Variance and noted that it did not conflict with the spirit of the ordinance because it was tied to the use at the shoreland lot. It would be used for storage for an additional car, recreational vehicles, and other items associated with the lot; it was not intended for residential living space. He mentioned that the topographical lines on the plan showed that there was a special condition with this property.

Steve Miller asked how the criteria for hardship would be met. Christopher L. Boldt, Esq., mentioned that hardship would be met by looking at the special conditions of the property, which were, a joint ownership existed between two lots, they did not have the area to put it solely on the inland lot, and the lots could not be merged. Steve Miller asked why the garage could not go next to the house, Christopher L. Boldt, Esq., referred to the spirit of the ordinance, in which that was to prevent the density of lake front lots. It met DES criteria, and they were outside of the 250' setback. Tim Morgan noted that for the Special Exception, they were before the Board because there were already two cottages on the lot, Christopher, L. Boldt, Esq., stated, that those two cottages made that a special condition of the property. Paul Monzione read from the application and it stated that it shall not grant the Special Exception unless the proposed expansion was clearly not a new use, not have an increase detrimental impact on the neighborhood, and would not increase any existing non-conformance of the building of setbacks or lot coverage. Lou LaCourse mentioned that the proposed leach field was in different locations indicated on the plan. Christopher L. Boldt, Esq., stated that in the narrative, the proposed leach field, which was pending a septic approval plan, which was indicated on page three (3), was correct. Frank Rich noted that Mr. Long was located about a mile from their leach field and it would be an extremely long pipe. Tim Morgan asked if they had a chance to see the concerns from the Fire Department, Christopher L. Boldt, Esq., stated, no. Frank Rich made note of the concerns in which the Fire Department requested them to drill under the ground. Lou LaCourse noted that there was a concern from the Conservation Commission about the septic line being drilled and to prohibit cutting on new pavement. Paul Monzione asked if there was an increase in bedrooms to the proposed house, Christopher L. Boldt, Esq., stated, he indicated space on the plan for a

fourth bedroom that could be installed. Paul Monziona wondered if that fell under increasing non-conformity. Christopher L. Boldt, Esq., did not believe so because the issue was the number of buildings and not the number of bedrooms. Paul Monziona agreed that under the criteria that prohibited the expansion of the non-conformity, this would not qualify because it was the same use. Paul LaRochelle wanted to know if Mr. Long was remodeling both structures, Mr. Long stated that maybe some time in the future he would like to put up some replacement siding, new windows, and a new roof, and would be leaving the footprint as is. Frank Rich disclosed that he had known Mr. Long for approximately 40 years and stated that he and his wife were impeccable builders.

Steve Miller opened up public input. No public input. Steve Miller closed public input.

DISCUSSION: None.

Steve Miller stated that the plat **had been** accepted in accordance with the Town of Alton Zoning Ordinance of 520B. All Board Members agreed.

Paul LaRochelle stated that the specific site **is** an appropriate location for the use. He stated that it was going to be centered on the lot, it was away from the lake, and it was improving the property that was currently there. Tim Morgan stated that site was being used as a residential use and was an appropriate use. All Board Members agreed.

Tim Morgan stated that factual evidence **is not** found that the property values in the district would be reduced due to incompatible land uses. He stated that the land use remained the same. Paul Monziona stated that there was a likelihood that this would increase property values. Steve Miller stated that there was no testimony against the application. All Board Members agreed.

Paul Monziona stated there **is no** valid objection from abutters based on demonstrable fact. He stated that there were no abutters present and no one sent in any comments or objections. Tim Morgan pointed out that there was a supporting letter from an abutter. Paul LaRochelle added that there were two letters submitted in agreeance. All Board Members agreed.

Lou LaCourse stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated that there was no increase in traffic. All Board Members agreed.

Steve Miller asked if the leach field was for four (4)-bedrooms, Christopher L. Boldt, Esq., stated, it was big enough to handle all three structures, which would be enough for eight (8) bedrooms.

Steve Miller stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of proposed use or structure as stipulated. Paul Monziona stated that the plan depicted the new septic system. All Board Members agreed.

Paul LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that by looking at the plan, even though it would be a long run, there was a newly designed approved septic system. Paul LaRochelle asked about the location of the well, Christopher L. Boldt, Esq., stated, the well was between the proposed house and the existing cottage that was closest to the road. All Board Members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent

of the Master Plan. He stated that there was an upgrade to the sewage disposal. All Board Members agreed.

**Lou LaCourse moved to grant the Special Exception for Case # Z17-13.
Paul Monziona seconded. Motion PASSED by a vote of (5-0-0).**

Case # Z17-14 Christopher L. Boldt, Esq., Agent for Timothy V. Long and Mehrnaz Aghvami- Long	Map 64 Lot 25	Variance Lakeshore Residential (LR) 158 Smith Point Road
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Paul LaRochelle stated that the variance **will not** be contrary to the public interest. All Board Members agreed.

Tim Morgan stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that there would be improvements to the area. All Board Members agreed.

Paul Monziona stated that by granting the variance, substantial justice **will** be done. He stated that there was no valid evidence as to why the Zoning Ordinance should be strictly enforced give the location of the proposed garage, and the use of the property. All Board Members agreed.

Lou LaCourse stated that the request **will** not diminish the value of the surrounding properties. He stated that no evidence was given either way, and by looking at the plan, it would enhance the values of the surrounding properties. Steve Miller stated that it looked like the best location for a garage considering the property configuration. Paul Monziona stated that here was nothing presented to the Board that would demonstrate that any property values would be diminished. All Board Members agreed.

Steve Miller stated that for purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (ii) The proposed use **is** a reasonable one.

He stated that the use was a reasonable one and the unnecessary hardship would be the configuration of the lot, which had three (3) cabins on it, and the only alternative to place that size garage would be on the adjacent property. Tim Morgan thought that part of the hardship was that the property was bifurcated by a Town road. All Board Members agreed.

Paul LaRochelle moved to grant the Variance for Case # Z17-14. Paul Monziona suggested Paul LaRochelle amend his motion to include the condition from the Conservation Commission regarding the septic pipe to be built under the road and drilled according to the septic design not affecting the road.

Paul LaRochelle amended his motion to grant the Variance for Case # Z17-14 to include the granting of the pipe being under ground and to be drilled according to the septic designs by DES, and to not affect the road.

Paul Monziona seconded the motion as amended. Motion PASSED by a vote of (5-0-0).

VIII. OTHER BUSINESS

1. Previous Business:

- a. Handout dated April 2011 entitled “Running a Smooth Public Hearing,” written by C. Christine

Fillmore, Esq.

- b. Updated handbook from NH Office of Energy and Planning, The Board of Adjustment in New Hampshire - A Handbook for Local Officials - November 2016.

2. New Business:

- a. Memo from Nic Strong, Town Planner, dated 5/30/2017, to the ZBA asking which two members of the Board would be sitting on the Zoning Amendment Committee.

Tim Morgan and Paul Monzione offered to sit on the ZAC committee. All Board Members agreed.

- b. Memo from Nic Strong, Town Planner, dated 6/1/2017, to the ZBA informing them of some formatting issues to the amendments to the 2017 Zoning Ordinance.

3. Approval of Meeting Minutes: May 4, 2017

Lou LaCourse moved to approve the minutes of May 4, 2017, as presented.

Paul Monzione seconded. Motion was PASSED by a vote of (5-0-0).

4. Correspondence. None.

IX. DISCUSSION

Steve Miller noted that the next Zoning Board of Adjustment meeting would be held on July 6, 2017.

X. ADJOURNMENT

At 10:30 p.m., Tim Morgan moved to adjourn.

Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

Respectfully submitted,

Jessica A. Call
Planning Secretary

Minutes approved as amended: August 3, 2017