

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
DRAFT MINUTES
Public Meeting
November 11, 2010**

I. CALL TO ORDER

Paul Monziona, Chairman, called the meeting to order at 7:00 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monziona, Chair, introduced himself, the Planning Department, and the members of the Zoning Board:

John Dever, Department Head/Building Inspector and Code Enforcement Officer
Timothy Kinnon, Vice-Chair
Lou LaCourse, Clerk
Tim Morgan, Member

Steve Miller, Member, was not present at this meeting (scheduling conflict with a Budget Committee meeting).

III. APPOINTMENT OF ALTERNATES

There are no alternates to appoint. There are four members of the Zoning Board of Adjustment present so there is a quorum; they are able to proceed with all cases on the agenda.

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.

V. APPROVAL OF THE AGENDA

There were no changes to the submitted agenda.

T. Morgan made a motion to approve the agenda as submitted. T. Kinnon seconded the motion which passed with four votes in favor and no opposed.

VI. CONTINUANCES

Case #Z10-25 Richard and Nancy Coskren	Map 20 Lot 3	Variance 1683 Mount Major Highway
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Application is submitted by Attorney Catherine Broderick on behalf of applicant Richard and Nancy Coskren to request a variance from Article 400 Section 452B, Required Frontage; to provide the ability to subdivide into 2 lots. This parcel is located in the Rural Zone.

P. Monzione read the case into the record. As he had at the previous meeting when this case was introduced, P. Monzione recused himself. The reason for doing so is because he has a professional relationship with Attorney Steve Nix, who is representing someone who wishes to speak either in favor of or against this case. Vice-Chair T. Kinnon took over as Acting Chair.

J. Dever stated that he had spoken to S. Miller prior to the meeting; Mr. Miller could be available if he is needed to form a quorum; as this is not the case (3 members do constitute a quorum of the ZBA).

Rod Dyer, senior partner in the Laconia firm of Wescott, Dyer, Fitzgerald and Nichols came forward; he works with Catherine Broderick. On the advice of counsel they do not believe they can go forward with a three member Zoning Board of Adjustment. He understands that the other Board member (S. Miller) is not available for this evening. T. Kinnon confirmed his statement; with three members present they are able to hear cases. Attorney Dyer continued, stating that as a lawyer practicing for over 40 years, he can not remember ever going forward with a 3 member ZBA. It just can't be. They would be happy to go forward with a four member Board; what he would recommend is to reschedule for a date certain, when they know the fourth member would be available. The Board members agreed to set a future date for this case. Tentatively, the date was set as December 2, 2010 with an alternative date of December 9, 2010; certain date to be communicated to the applicants by J. Dever. The alternative date would be communicated also to Attorney Nix.

Attorney Catherine Broderick introduced herself and stated that they appreciate that this is a short Board with no alternates; she thanked the Board for their accommodations. She will communicate with John (Dever); hopefully they will be able to hear the case in December.

T. Morgan made a motion to continue Case #Z10-25 to the meeting on December 2, 2010 with a backup date of December 9, 2010; the reason for the backup date to be sure that there are four members of the ZBA, exclusive of P. Monzione, available. L. LaCourse seconded the motion which passed with three votes in favor and no opposed.

P. Monzione returned to his seat at the table and resumed his role as Chair.

VII. NEW APPLICATIONS

Case #Z10-27 Ronald and Susan Bell	Map 34 Lot 33/16	Special Exception 71 Mount Major Highway
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Application submitted by Roger Sample dba BMS on behalf of applicant Ronald and Susan Bell to request a Special Exception to jack up the cottage and install full foundation, rebuild existing screen porch and expand 2nd floor out over rebuilt porch. This parcel is located in the Residential Zone.

P. Monzione read the case into the record. Roger Sample came to the table to present this application.

The Board members reviewed the application for completeness. J. Dever handed the members a larger scale of the plat that was included in the packet. T. Morgan asked if there is a checklist for Special Exceptions; J. Dever answered that there is one. There was not a completed one submitted with this application, so J. Dever provided the members with a blank one.

P. Monzione addressed Mr. Sample with regard to the application; he asked if Mr. Sample had seen the Staff Review accompanying the application. He had not; J. Dever provided one to him. P. Monzione explained that, just in dealing with the application itself, and whether to accept it as complete, the Board has lately as a matter of routine, sought to have applications submitted that would appropriately delineate setbacks, and would appropriately delineate the location of the proposed structure or modification to the structure on the lot. They do not always necessarily require a formal site plan review or engineered plat, but they do require drawings to scale or stuff that will give them an indication of where the setbacks are and where the envelope of the construction is,

and so forth. There are some concerns that have been expressed by the Code Enforcement Officer with regard to the plat; those concerns are part of the Staff Review. Mr. Sample received and reviewed a copy of the Staff Review.

P. Monziona asked if in regard to the application itself the members had any questions or concerns for the applicant. T. Morgan stated that in the narrative the proposal is to construct a foundation; in the drawing it shows that even with the addition that there would still be piers under the building. He is also concerned that the setbacks, and there seem to be a number of them that are applicable, are not shown on the drawing. The concerns of the Fire Department are of considerable merit because of the fires that have occurred there. T. Morgan voiced concern about accepting the application in its current form. The applicant asked if there was a question in that; P. Monziona explained that he had asked for concerns that the Board members would discuss among themselves to determine whether the application should be accepted.

P. Monziona asked the applicant if he had now had an opportunity to see and read the concerns of the Code Enforcement Officer or the Planning Department; he has done so. P. Monziona directed him to the first of the Code Officer's concerns, which is that even though there is a recent survey of the Alton Bay Christian Conference Center, the plat that was submitted with this application is missing several setback delineations, including the 150 foot CSPA setback and the State Route 11 DOT right of way (ROW). The drawing he submitted was supplied by Varney Engineering; Mr. Sample indicated that he believes the setbacks are on it. P. Monziona acknowledged that the members had just received the larger scale drawing and asked J. Dever if he still has the same concerns about the setback delineations. J. Dever indicated that he does; the only setbacks shown are the 50 foot Shoreland setback and the 25 foot setback for the Town's lot-line. There is no delineation as to the DOT right of way; it does run close down through there. The 150 foot setback would indicate the relationship also to another body of water that backs up to this. Any of the setbacks should be shown.

P. Monziona referred to the bodies of water as falling within the Shoreland Protection Act and no delineations are included in the plat with regard to that. Additionally, there is some concern that the side elevations indicated on the plat are inaccurate; they are not showing the previously constructed 6 X 12 foot first floor addition on the rear of the structure, which is used as a living space. That is all in J. Dever's paragraph 1.

Mr. Sample indicated that he is having difficulty because he came without his glasses; he had not read that. P. Monziona loaned him an extra pair of reading glasses. The applicant went back to the Staff Review to familiarize himself with the concerns. Mr. Varney joined Mr. Sample at the table to aid in answering the questions.

Mr. Varney indicated that the property line is the right of way line for the DOT. The black line along the road and sidewalk is there. J. Dever responded that there would be no way to know that; it is not labeled on the plan as such. When Mr. Varney voiced confusion, P. Monziona explained that when the property line is the right of way line, the members don't know that and have no way of telling that from the drawing because it does not delineate it as such; it only calls it the property line and not the right of way line. Mr. Varney is representing now, as the person who prepared this plan and engineered the drawing, that the property line and the right of way line are the same. P. Monziona asked if from there the members would be able to ascertain the setback from the right of way; Mr. Varney answered that they could; there is a setback line on there based on the right of way/property line.

The 150 foot Shoreland setback overlaps, so there is no sense putting it on there; there is water on both sides of the property, so when you set a line 150 feet, that would be confusing and misleading. P. Monziona responded that the question for him would be that when he looks at the footprint of the structure and/or the proposed structure, how does he determine from this plat where the outer lines of the footprint are in relation to the water bodies for which there needs to be a 150 foot setback. Mr. Varney answered that the 150 feet eliminate each other because they overlap, so it doesn't make sense to have them on there to look at. P. Monziona asked if there is a water body on more than one side of the structure or the proposed structure, wouldn't the outside wall or

walls on either side of the structure or proposed structure they are talking about each have to be 150 feet setback from the water, wherever that mark is measured from. Mr. Varney again expressed that it wouldn't make any sense; the two lines overlap, so it makes no sense to have them on the plan. There are two lines they could measure from, so that makes it more confusing. P. Monziona asked if any portion of the building is within the 150 foot setback. Mr. Varney answered that he thinks it is. Mr. Sample added that it is, in both directions; he believes that is what Mr. Varney is referring to. If you take the 150 foot from the front and the 150 foot from the back, the one from the back would be in the front. P. Monziona clarified that this is only because the building is apparently sitting within the setback of both water bodies. Suppose it wasn't? He is just saying that if a plat is complete, one of the things the members would be able to tell just from looking at the plat, if it did delineate that, would be that the building is within the setback with regard to both water bodies. It might have been within 150 feet of one and more than 150 feet from the other, but they now know it is within 150 feet on both sides.

P. Monziona explained that one of the things the Board has been trying to stress, especially lately, is that with the drawings, they should be able to tell where the proposed structure sits with regard to all applicable setbacks, whether that is property line, Shoreland setbacks, or whatever they happen to be. In the past they have accepted things just sketched out on paper and, if that does it for the members, and shows it to scale and the Board can sit and intelligently understand and appreciate where the building is, that's fine. This is a very good drawing and a lot of times they don't get something in even this much detail. The Code Enforcement Officer was correct in having reviewed this; the drawing itself doesn't show that. For the application to be complete, the members would like to see certain information apparent on the drawing.

P. Monziona continued, still referencing J. Dever's paragraph one. There are several physical features that are either omitted or incorrectly located, such as the large tree at the left corner of the cottage and the telephone pole located at the right rear of the structure. If those are depicted anywhere, they would like to clarify. Mr. Varney pointed out the telephone pole; J. Dever explained that it is not located there (where indicated on the plat) it is closer to the road, about six feet from where they are showing it on the plan, and the pine tree just isn't there. It is very close to the front of the cottage, and they will have to work around it. Mr. Sample stated that the tree is coming down.

P. Monziona went on to add that there is another issue with regard to the proposed location of the propane tank. The Board understands that it will not be buried; it will be present on the exterior of the property, and that is an item that has been of concern with several applications in the past. That should be depicted on the application if a location has been determined. Mr. Sample answered that there is not a set location yet, but it will probably go back where it was originally, in the corner of the back. T. Kinnon read from the Staff Review; at present it is a 20# tank located under the cottage. Mr. Sample explained that this was all they were using to run a little heat in the summer time.

T. Kinnon stated that one of his biggest concerns is that considering the scope of work proposed here, there are no dimensional drawings of the existing cottage, the proposed expansion, both of elevations and widths, and the plat that has been submitted does not show the rear addition. Yet, on the plat submitted, it shows that to be part of the expansion. That is probably his biggest concern; there is no dimensional information for the proposed construction. Mr. Sample answered that he believes there is, but it could be in different places; he also acknowledged that the drawing of the back isn't an actual drawing of the house. It is more to feature the front of it, where the actual work will take place. He is not sure, but if they were to measure the footprint, it will match the existing footprint. The drawing isn't accurate, but there are pictures of the house that show the rear expansion, and there will be no expansion over that rear. The dimensions of the expansions are all listed in the narrative.

P. Monziona asked Mr. Sample if this is the first application he has submitted for this particular structure; Mr. Sample answered that it is. P. Monziona recalled that Mr. Sample has submitted applications in the past for people with the name "Bell"; for modifying porches into rooms or rooms above porches. Mr. Sample assured P.

Monziona that the one he is thinking about is 75 Mount Major Highway; this application tonight is for 71 Mount Major Highway. P. Monziona stated that the reason he asked was because he had been wondering if the information from a previous application, if it pertained to this building, might be part of the file and applicable here. Mr. Sample referred to the previous application in reference to the propane tank; the tank was an issue and Mr. Miller wanted it buried. It was already installed and running, but they went ahead and buried it. The Code Enforcement Officer went to the site with the Fire Department and told the applicant they did not have to bury the tank, but Mr. Bell went ahead and buried it because that is what the ZBA wanted. It is ten feet from the structure, and it is buried.

T. Morgan has looked through the application a couple of times, and he does not see the dimensional drawings. Mr. Varney answered that they are on both diagrams; there are 15 feet on the front and 12 feet on the back, and 32 feet on one side and 21 feet on the other side. P. Monziona acknowledged that they have provided the dimensions of the cottage on the drawing as to where it sits and so forth; he thinks what is being asked for, in regard to the new proposed construction, dimensions on what that is going to be like regarding the overhang, whether it is in the footprint, the height of it, and so forth, of what they will be building – something like a construction drawing that you would be looking at to actually build the structure. Mr. Sample answered that in a sense they have that; the back side of the house is inaccurate, but the front shows the existing and then the proposed addition in the drawings at the top. T. Morgan stated that the applicant had just said his plat was inaccurate; the rear of the house is inaccurate, the foundation is inaccurate – there is not an accurate drawing anywhere that the Board can look at and understand. Mr. Sample said he could not understand how the members could not understand this (indicating the plat). T. Morgan answered that the applicant had just told the Board it was inaccurate; Mr. Sample stated that it is an inaccurate drawing of the back of the house and they're not working on it. T. Morgan again stated that the depiction of the back of the house and the foundation are inaccurate; Mr. Sample responded that there is no foundation at this time, so there is no foundation. He can't argue with the drawing of the back of the house not matching the pictures he provided, but it is the front of the house where the additions are going to take place.

P. Monziona stated that whatever it is that they are attempting to do to the building, the dimensions of the building as they presently exist are very important to the Board in determining how this is all going to come together and what it looks like when it's done. One of the things the Board has been trying to do most recently is to get as much information in an application in terms of detail that tells the members all the things they need to know about how the structure is located, what the dimensions are, what the setbacks are, if there are Shoreland Protection issues, and so forth. They are trying to be more stringent about that in general so they have a better understanding when they look at applications whether they qualify to be granted. Even more so, in this Center, where the buildings are so close together and so forth, and where they are non-conforming to start with; now the applicant is seeking to do something more to it. It is extremely important that the information they have when they make a decision is as complete as it can be. It is helpful if they have accuracy in terms of the entire structure as it currently exists, dimensions of what they propose to add to it, and then what that does to the building in terms of where it leaves it.

Some of what P. Monziona can glean from the application is that the applicant is expanding more into the setback, or creating more stuff that will be in the setback; he would like to see more, and that is the concern voiced here. Mr. Sample has submitted applications in the past and the Board always works carefully with this stuff and they try to understand it as best they can before they make a decision. These concerns that the members and Staff have are legitimate and important.

P. Monziona asked if there are any more questions from the members in regards to the application itself. T. Kinnon stated that he would just like to emphasize the drawing showing the existing and proposed. The applicant is proposing to put a foundation in, but it is not shown on the proposed drawing. Also, neither the existing nor the proposed drawing depicts the second floor that is existing now. If you look at the picture, it clearly shows two floors; the drawing does not. This is what he was talking about; there is no construction dimensional information for the Board to go by. The photos don't work. Mr. Sample responded that if they saw

a front view of it, they would see the windows and understand the second floor. As the photos show, the windows are quite below the roofline, so either the house has 12 foot ceilings or the house has a second floor. T. Kinnon voiced understanding, but they have to infer that; the members should not have to infer anything. It should be clear so that anyone can see from a drawing or a sketch that there is a second floor. The picture does not give enough information; it doesn't tell what the height is or what the dimensions are and that is what the members are looking for so they can clearly see what's there, what's proposed, and what the end product is going to be. That is to alleviate issues; there are people who would come in and be as vague as possible so they can do whatever they want to do. He went on to say that he feels this applicant's intent is good, but the Board needs to set the standard so that everyone comes before them with the same information.

P. Monziona asked Mr. Sample and Mr. Varney if there was anything more they would like to add with regard to the application itself, in terms of its completeness. Mr. Sample answered that the only thing he could add is that he does believe it is complete because he had time and the ability if it wasn't complete. A lot of what the Board is asking for, he will come again and make sure they are there, but he would have thought that a lot of what they are asking for now he would be discussing with John (Dever) in the building phase. That is when they need to know elevations, unless he was going to increase an elevation that isn't there now, which he is only doing on the front porch. In his belief the application is complete, and with the year pushing on they are heading into winter. Getting postponed a month to put some measurements on a building is going to put a lot of guys out of work, namely himself. That's all he can say at this point.

L. LaCourse asked the applicant if he had a copy of the ZBA Application Checklist. Mr. Sample answered that he does not. L. LaCourse asked him if he has ever seen one. He answered that he has. L. LaCourse had confirmed through questioning that the applicant knew what the Board requires.

P. Monziona explained that the Board has drafted some proposed instructions that they provide to the applicants to help the members; he thinks it is kind of a narrative that the Board spent some time putting together so that when applicants come before the Board they have the benefit of knowing the kind of stuff the members need to see in order to make this happen. He gave an example of perhaps having a construction that would come very close to or exceed the height restriction; the Board doesn't have the dimensions of height in the drawings, and that is measured from the average finished grade. Maybe part of the building is up really high, and the Board has approved something and then find out later that the applicant has exceeded the 35 foot restriction by a foot and a half when they do the average, and the Board didn't know it and granted a variance without knowing. This information does serve a real purpose for the Board; it makes it helpful and makes sure that what they do is going to stick. The Board doesn't like to see what they do get challenged in court; they like to be as complete as they can.

T. Kinnon made a motion to not accept the application as complete at this time. T. Morgan seconded the motion which passed with four votes in favor of not accepting the application at this time and no opposed.

P. Monziona asked if there is a process when that happens; he does not think the application gets bounced. He believes there is further time given to the applicant to get the information needed based on the discussion, and the applicant is rescheduled as quickly as possible. J. Dever opined that the applicant can legally be scheduled for the next meeting; that keeps the notice going. P. Monziona asked the applicant if the date of the next meeting would give him enough time; Mr. Sample felt that would be fine.

T. Morgan made a motion to continue Case #Z10-27 to the next meeting which is December 2, 2010. L. LaCourse seconded the motion which passed with four votes in favor and no opposed.

T. Morgan recalled that this Board had discussions in the past about requiring applicants to provide permits (such as Shoreland) with their application; he asked what the outcome of those discussions had been. P. Monziona explained that the Board had discovered that sometimes that creates a Catch-22 for the applicant because some people have said that it is a lot to go to the DES and spend all the money to go through the

engineering and lawyers to get permits when they don't even know if they are going to get past the ZBA. Many times, if they explain that, the approval will be conditioned on them getting the permits; once they get the variance or special exception, then they go ahead with the permits. Sometimes DES can be more involved and expensive, and the applicants choose to do that after the ZBA. Whatever the case is, this Board will condition anything they grant on the permits. J. Dever added that just recently the Shoreland Permits have been coming to the town, so when the applications come in he has been reviewing them to see if there is a need for a building permit or zoning relief, or whatever. He is notifying those applicants of that so that if they wish to do so, they can be concurrent. T. Morgan asked if he was permitting those processes to go on simultaneously; J. Dever answered that he was aware that in the past the Board had conditioned approval, and it doesn't go through with a building permit until it has those approvals. That's written in stone. T. Kinnon recalled that they have had cases just within the past year that the applicant has stated that DES would not even accept the application until they had come before the ZBA.

Case #Z10-28 Garry G. Robertson	Map 51 Lot 25	Variance 6 Saley Way
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Application submitted by Thomas W. Varney, PE Varney Engineering LLC on behalf of applicant Garry G. Robertson to request a Variance from Article 300 Section 327 of the Zoning Ordinance to permit a proposed garage to be one and two tenths (1.2') and one and nine tenths (1.9') to the side property line and eight and two tenths (8.2') feet to the roadside property line. The existing property is non-conforming. This parcel is located in the Lake Shore Residential Zone.

P. Monziona read the case into the record. He went on to say that he was informed this afternoon that Steve Rogers, who is an abutter to this property, was going to be present. Mr. Rogers is present and may speak for or against the application. P. Monziona has a professional relationship as well as a personal friendship with Mr. Rogers; it is only fair that he make a full disclosure on that. Mr. Rogers may be speaking in favor or against; P. Monziona does not know. Typically where someone is going to speak on an application, one way or the other, and he has that type of professional relationship or otherwise, it would be grounds for his recusal. P. Monziona went on to say that he felt he should recuse himself; he had done that in the Coskren case because Mr. Nix is an attorney who was going to represent an abutter who was going to speak in favor or against the application. P. Monziona works with Mr. Nix on a regular basis, so he recused himself there. This recusal would be a P. Monziona's discretion to some extent, but he would entertain thoughts from the applicant; he is leaning toward recusing himself unless there is an objection either way.

Mr. Tom Varney who is representing the applicant in this case stated that they would not want to go forward with only three members; it would be beneficial to them to have four members. With only three it puts them in a position that is not very good. P. Monziona acknowledged that. Mr. Robertson, the applicant, stated that he and Mr. Rogers have talked; Mr. Rogers knows what he is trying to do and he believes that Mr. Rogers would have told him if there was a problem with what he is trying to do. Mr. Robertson does not know what Mr. Rogers is going to say, but he assumes it will be nothing more than what he has already said to the applicant.

T. Kinnon voiced the opinion that, due to the type of community we live in, it is difficult not to have relationships with people who come before the Board on occasion. He went on to say that because the applicant has someone who is going to speak either for or against, and it is one person speaking, he does not think that is really going to put a lot of weight on the Board member's decision. It may have some play, but such a minute impact that T. Kinnon would be in favor of P. Monziona staying on.

L. LaCourse simply stated that he is good.

T. Morgan stated that if P. Monziona believes he can be objective and listen to the application and to the comments from the public then his presence on the Board would be appropriate.

P. Monziona stated that he wanted to give all concerned an opportunity to raise any objection they might have. He explained to the applicant that in offering that opportunity, as they had seen with the Coskren case, if he did recuse himself, if that was the preference of the applicant, they would not have to go ahead with three members. They would have the option to proceed at the next hearing where there would be four with Mr. Miller present. They could go ahead in December. He also stated for the record that he does these things fairly and objectively; if someone gives him information that bears on this he listens and takes it into consideration. Who it comes from does not give it any different weight.

The Board proceeded with this case, first reviewing the application for completeness. T. Kinnon voiced concern that there is no height dimension on the plans. Mr. Robertson explained that he had been told by staff previously in the Planning Department to go to the State first; if they say yes then it comes to the ZBA. He is under the belief that he is before this Board to find out if he can put a building there. If the answer is yes, then he understands that he has to have an approved plan to go to the Building Inspector and get a building permit. There isn't a dimension for height or garage door size; there isn't any building plan. This is just a "this is where it is going to be" based on the Board saying yes or no. T. Kinnon clarified through questioning Mr. Robertson that it is depicted as 26 X 26 feet.

T. Morgan mentioned that there are a couple of concerns in the Staff Review; he asked Mr. Robertson and Mr. Varney if they had seen those. Mr. Varney has read them; Mr. Robertson took a minute at this time to read the Staff Review.

P. Monziona referred to the last sentence of paragraph one of J. Dever's comments and asked for clarification of "highway policy." J. Dever explained that it is the highway policy which contains the road and driveway regulations. It could more correctly read "highway road construction policy."

T. Morgan asked Mr. Varney his thoughts on the comments in the Staff Review. Mr. Varney responded that he went through a checklist to provide his plan for the ZBA, and he has a surveyor's plan (the members have a small version). He stated that when someone applies to the ZBA for a variance, there is no checklist; there is a Zoning Board of Appeals Application document that says "you are strongly encouraged to submit complete, thorough information and supporting documentation to assist the Board members in making their determination on your appeal. At the very least your application should include a town tax map or a recent survey map drawn to scale. It also may include and is not limited to a descriptive narrative, photos of the property, detailed sketches, engineered plans and copies of deeds and easements." There is no checklist for a variance. If you ask for a Special Exception, it lists that you have to comply with the town of Alton Subdivision Regulations Section 7 or Site Plan Regulations 7a and b.

Mr. Varney went on to say that he goes through a checklist on applications wherever he goes, in other towns, and they try to go through each and every one and not leave anything uncovered. The survey plan does not have the setbacks on it; that is the surveyor's plan. He left out sideline setbacks, but he did provide the survey that was asked for. Mr. Varney submitted this plan in September and he had a reference to a survey that was done in the 1980's by George Christensen and he was told they needed another survey. They hired a land surveyor and got this survey. He corrected his plan because there were some corrections that needed to be made; he updated his plan based on that survey. He feels that they have as much information as they possibly can have, as to what the ZBA requires.

P. Monziona stated that in the past they have delineated things they need to make a correct decision; there is no legal requirement that those things are always provided or are provided in a certain way. Those are the things that typically the Board needs in order to understand the application and make a decision. An applicant is free to submit what he or she thinks is sufficient; many times it may be, and other times it may not include everything on the checklist. There are some things that if you are not going to do, waivers must be requested.

Mr. Robertson asked if there is a new checklist that he is not aware of; P. Monziona answered that he does not think so.

P. Monziona requested further questions from the members in regard to the application. T. Kinnon stated that he does feel that the information in this application is good; it is what they have been asking for. It does show the 10' setback and the 50' Shore Land and 150' Shore Land; the elevations are all there. Unless any member has other information they're looking for, T. Kinnon feels it is what the Board has been asking for. L. LaCourse asked if all the setbacks are on the plat; T. Kinnon noted that there is a line indicated as "10' setback line" and the dashed line goes around the property. L. LaCourse indicated comments that indicate that the lot line is not shown, and there is a town road not delineated. Mr. Varney explained that the setback lines are not on the survey map, but the road is delineated on the latest survey plan. There was further discussion concerning the fact that the surveyor's map does not show setbacks but they are on the engineered drawing. Between the two documents, which are both part of the application, all necessary information is provided.

T. Kinnon made a motion to accept the application for Case #Z10-28 as complete. T. Morgan seconded the motion which passed with three votes in favor and one opposed (L. LaCourse).

Mr. Varney presented the application. He stated that Mr. Robinson is proposing to add a garage on his property. The plan is to attach it to the existing structure and provide enough room for vehicle access and maneuvering by its location. Three corners of the garage will be 1.2', 1.9', and 8.2' from the property lines. The possibility of having a garage on this property is the result of having a new house construction on the adjacent property and the change of access to this property. The new access is being provided to Route 11-D. The property is undergoing an environmental makeover by reducing the total impervious area from 74.6% to 60.5% due to the reduction in the driveway area. Porous pavement, rain gutters, drywells and Shoreland Planning are designed as improvements to the property.

Mr. Varney continued, explaining that the reasons for the hardship items are that denial of the variance would result in unnecessary hardship to the owner because a limited space is available for the placement of a garage, and under fair and substantial relationship to the ordinance, the answer is that the property is non-conforming. The variance would not injure the public or private rights of others since the garage is away from the neighbor's access to Route 11-D and will not affect the views of others. The specific request is the minimum variance that will grant reasonable relief to the owners necessary for such reasonable use because the garage location provides suitable driveway space for parking and maneuvering a car. The request is in harmony with the spirit of the Zoning Ordinance and the Master Plan and character of the district because a garage is part of a developed lot in the Lakeshore Residential Zone. The request is not contrary to the public interest because the garage is an improvement to the property. Substantial justice will be done because the property is being environmentally upgraded as a result of this project. This will not reduce the value of surrounding property because the property will be improved by changing the access and a garage will increase the value of the property.

Mr. Varney went on to say that there are a couple of pictures in the application; there is also a Shoreland Permit approval, a survey map, and a septic design that is 10 years+ old. Mr. Varney referred to the existing and proposed diagrams. The existing shows a lot of pavement; the proposed shows the garage and the pavement area reduced in size. That makes a big difference in terms of storm water runoff. They have added storm water measures to capture the rainwater so they will not be polluting the lake, as they are today. This is a big improvement to the storm water runoff. There is porous pavement included in that to further reduce it and to meet the state's requirement to make it more conforming than it is. There will be some Shoreland vegetation and blueberry bushes planted, as well as some trees.

Mr. Varney continued. The next door property has had a major transformation in the driveway and the one for this property has been cancelled out and new access has been provided at a different location. That has already been built for the last few weeks. Since this application was submitted, that work has been done. The new driveway allowed the applicant to build a garage in the first place; that allows him to change the driveway and

the areas around it and makes a big difference, and that is why he is trying to build a garage. Mr. Robertson is building a garage that is attached to the house and lines up with the house and still gives room to maneuver his car. That is why they are within the setbacks.

As far as the diagram for the garage, they don't know what that is because an architect has not been hired to determine that yet. The applicant wants to know if this can be approved before he spends that money.

T. Morgan asked Mr. Varney for clarification of the nearby property that has been changed and referred to several times. He asked if this is the property to the south; the applicant answered that it is. T. Morgan asked how far away that is from the property line, with the building being constructed there. Mr. Varney answered that the building is not within the scope of the plan; it's not shown because it is beyond what is shown on the plan. There is a driveway shown, and it is to the left of that.

P. Monziona asked Mr. Varney about the proposed part of the drawing where it depicts the house; he wanted to verify that the hatch lines depict the footprint of the current house. He asked what the distance is between the house and the garage; Mr. Varney answered that it is attached to the porch. It is an attached garage, which is shown as a white area that goes around the outside of the hatch lines showing the footprint of the house. Mr. Robertson added that the garage will be right against the porch. P. Monziona asked if there would be access from the garage to the porch. Mr. Robertson answered that there is a kitchen door, then the six feet of porch, and then another door to the garage. There will be a roof over it. P. Monziona clarified through questioning that there would be access to the garage from the porch, which is on the ground floor. The porch is covered but not enclosed; it will not be enclosed.

P. Monziona asked Mr. Varney if there is some regulation they need to look at for this application besides Article 300 Section 327. This is a lot with a non-conforming structure on it already; the house is obviously non-conforming. He asked Mr. Varney how many respects there are in which this house is non-conforming; it is non-conforming on the property line to the south because... He asked the applicant the distance from the house to the property line to the south. Mr. Varney answered that it is 2 – 3 feet, depending on where you are. It is not non-conforming to the north property line; J. Dever corrected that there is a bump-out in that direction that does encroach into the setback. The property is non-conforming on the waterfront side. To the rear, at the very farthest point, it is fine until the garage goes up. The proposed garage will be non-conforming on the south side because it will be only 1.2 – 1.9 feet. The garage will be square to the house for aesthetic reasons. The closest the proposed garage comes to the property line is 1.2 feet. At the ROW, which should be 10 feet, there will only be 8.2 feet at the closest point of the proposed garage.

L. LaCourse asked about the location of the garage and the distance to the property line; Mr. Robertson demonstrated the distances using his hands. The dimensions shown are the short dimensions and then they get greater.

P. Monziona asked Mr. Varney where the access to the garage will be located; he asked if they would go over the leach bed. Mr. Varney answered that they would; they will just back out and have room to turn around. According to Mr. Robertson, the garage doors will face north, which is where the new ROW driveway comes in.

P. Monziona asked if there is anything in the ordinance that references the percentage of the lot that can be taken up with buildings. M. Varney answered that there used to be one that was 20%, but that got taken out and reference is made to the Shoreland Act. They allow you to go up to 30% and then you have to apply for a redevelopment waiver, which they have done. Alton zoning does not have a lot size percentage of coverage.

P. Monziona asked if the proposed garage is within the Shoreland Protection setback. Mr. Varney explained that the whole property is within the Shoreland Protection zone, but they are outside the 50 foot zone where it matters the most. They are free to build outside that 50' line. They are fine with that, and the state has approved it. T. Morgan asked if the state approved the density as well. Mr. Varney answered that the density was 76%+,

and now it is down in the 60's. That is the positive thing. He didn't like doing this at the beginning but this came out with a positive answer. Once you are over 30% with the Shoreland Protection, you're in trouble; they can deny you for nothing. This is an improvement to the property; an environmental makeover has been done just by cancelling out the pavement and the relocation of the driveway. The garage helps it because they capture the rainwater, so they reduce the percentage in a positive manner. They have upgraded the shoreline with trees and shrubs. P. Monziona confirmed through questioning that they are reducing the total area of impervious area that currently exists. Mr. Varney answered that they are; that is a big deal, and the best thing happening here. They are reducing that area from 76.4% to 60.5%.

P. Monziona asked Mr. Varney if he is okay with the leach bed being driven over; Mr. Varney answered that it is being driven over now, and it's okay. It is currently paved. With the new pervious area, it will not be driven over. The porous pavement will be downhill of the bed.

P. Monziona asked about the total dimension of the garage; all they have is the 26 X 26 dimension. There is no height dimension; he conformed through questioning that the garage will not exceed the height restriction in the ordinance. The applicant agreed that it would not. P. Monziona referred to the Code Enforcement Officer's comments where he states that a standard garage is 24 X 24, which if this were would take them another two feet out of the setback and make it less non-conforming than what is currently proposed at 26 X 26. He asked if there is a reason why that additional two feet is necessary. Mr. Robertson answered that it is based on the size of his vehicles. P. Monziona explained that it would be less of a request and asked the applicant if the smaller dimension would work for him. Mr. Robertson explained that the depth would not work; on the width it could work if he could keep the 26' depth. This would not change the south setback even if it was 24 X 24. There are going to have the garage flush with the back of the house so there will be no jog in; he and the neighbor have talked about this and decided they don't want it to be ugly for the next person. T. Morgan asked if it were to be reduced to 24' east to west would it remove one of the areas of concern; the applicant agreed that it would, but it would reduce the least problematic. P. Monziona stated that it would reduce the ROW setback encroachment; the ROW has been moved.

P. Monziona stated that another concern is that nothing has been done concerning the abandonment of the existing or established ROW. In other words, this may still show on the town maps that the ROW exists where it previously did, which may make this look even worse. Mr. Robertson pointed out that the property that is going around him is the one that removed the ROW; it was by their choice. L. LaCourse confirmed through questioning that this is Lot 27; Mr. Robertson stated that it basically surrounds his property and that of the next door neighbor. They have done a lot of redoing there and wanted that driveway gone, so they moved his access there (indicated on plan) which is done. P. Monziona asked Mr. Robertson if he is landlocked except for the driveways; Mr. Robertson answered that he is. L. LaCourse asked if the only person losing a ROW is this applicant; Mr. Robertson answered that he had been supplied with a new ROW. P. Monziona asked if the new ROW is what is now enabling the applicant to have a garage; Mr. Robertson answered that it is.

There were no further questions from the members. Mr. Varney added that, in reference to the shape of the garage, that would be done by the architect to blend it in with the existing building. Mr. Robertson added that would be his intention; when they first started this, they were of the understanding that this process is to find out if he can have the building before he spends X number of dollars to get the proposal done. P. Monziona commented that he takes the Alton Department Head comments that they get from the various departments very seriously; he finds them very helpful and insightful. Those folks, particularly J. Dever, have a lot more time than the members do to go out and fully investigate this. Their comments are very helpful. One of the comments that struck him was the 24 X 24, which would make it less of a request; it would not be as non-conforming into the setback. He understands that the depth would not work and he appreciates that; it will be dealt with in the hardship analysis. However, he does wonder in the other direction if the 24 feet might work; that is something the architect can determine.

P. Monziona invited public input from anyone who might wish to speak in favor of the application.

Mr. Steve Rogers came forward; he is Garry's (Robertson) neighbor and does not have a problem with what he is doing. His only request to Garry when they discussed it was that the garage remains only one story. That is his only concern. They have discussed this. Mr. Robertson added that he and Mr. Rogers have talked and verbally agreed that Mr. Robertson will obtain a picture plan and show it to Mr. Rogers for a yes or no. Mr. Rogers again stated that having it one story was his only concern. Mr. Rogers also agreed that the applicant needs to get together with an architect as far as the dimensions are concerned so that he can see what will work. Mr. Robertson added that Mr. Rogers really doesn't care whether it is 24 X 26 or 26 X 26; it really doesn't change his property at all, or what is going on. Mr. Rogers stated again that his major concern was a two story building, and Mr. Robertson had assured him that it would not be.

T. Morgan asked Mr. Rogers about the new right of way that is going in and whether it is registered with the town. Mr. Rogers answered that he is working on that; it is being done. He has put together the application and met with Kenny Roberts, and he is also getting something else drawn up for the new ROW because what is there is now at the other end of the property and it has to be registered with the deed. He is putting that together, he just didn't get it done all at once. T. Morgan asked Mr. Rogers if it is his intention to do that so that the existing ROW will be gone. Mr. Rogers answered that it has to be done; they have changed not only the ROW but the 911 also. There were three houses working off of one driveway; now there will be three houses with two driveways. That is all being put together now.

Mr. Mark Cassidy is an abutter who lives across the street from the proposed project. He is in support of the project; the applicant maintains his property nicely; it is well maintained and he is sure the project will improve the neighborhood.

There was no further public input in favor of the application.

P. Monziona requested public input in opposition to the application; there was none.

Before closing public input, P. Monziona asked Mr. Robertson if it is his representation that he is presenting this application for a one story structure. Mr. Robertson answered that he is not going to butt heads with the neighbor by putting in a two story structure; he is not going to get an approval and then sneak something behind his back. P. Monziona explained that what determines the application is not necessarily an agreement they might have or consent from the neighbor, but for the purposes of going through the worksheet, and as they look at this, some of the things they are asked are whether it is going to have an affect on the values of surrounding properties, and one of the things that is helpful is that they are submitting this application saying that the height is unknown and the applicant is going to do whatever the ordinance allows him to do, or that he is saying for purposes of this application, the structure is described as 26 X 26 and one story. Mr. Robertson answered that P. Monziona's statement is correct.

There were no other questions from the Board or comments from the applicant. The Board members decided to deliberate rather than go directly to the worksheet.

T. Kinnon voiced concern that they would be granting the variance mainly for the reason of aesthetics. The garage is located mainly in the spot where it is located so that it lines up with the existing house. That tells him that the hardship does not run with the land, it runs with the existing structures; he does not think they can legally grant a variance based on an existing structure hardship. He fails to see the hardship with the land as it applies to the structure and the size of the structure.

P. Monziona responded saying that when he looks at the application; this is such a non-conforming lot to begin with, and looking at the land and the building that is on there presently with the leach field and everything else, given the unique characteristics of this land, there is no place else that structure could go. In other words, he is not so sure it is being placed there for aesthetic purposes with the house as much as that this is the only place on

the lot where a building of this size could be located. T. Kinnon stated that it had been said that the placement was for alignment with the house, for aesthetic reasons. Someone down the road could come in with an application and say that one had been granted for aesthetic reasons, why not grant the second. P. Monziona voiced that he does not know right now how he is going to come down on the other criteria – he will know as they go through them. But, given the location of the new driveway, the leach field, the patio, and the location of the house as depicted on the proposed drawing, the only place logically, given the characteristics of the lot, that the garage could go, is there. They did place it in a way that lines up with the house aesthetically, but P. Monziona does think, as he looks at the plat, that if they want to have a garage there isn't any place else it could go.

T. Morgan added that even though the applicant did make the statement T. Kinnon is referring to, that it is just a part of their application. If one were to read the write up in Section 3, Application for a Variance, where they address hardship they talk about the limited space available for placement of the garage, which is what P. Monziona has been talking about. That statement is borne out by what is shown on the drawings; there is virtually no other place to put a garage of any particular size without rebuilding the entire structure. T. Kinnon agreed with that; the placement does have to be there. He wanted to talk about this because he agrees with Mr. Varney that this is an improvement and they are going to be decreasing the non-porous surfaces and a benefit to the lake. L. LaCourse asked if the non-porous surfaces are being reduced because the garage is being put in or is it just being done. T. Kinnon answered that it is a mitigating factor. P. Monziona added that they can make it a condition of the variance that the reduction of the impervious surface is as depicted on the plat. The representation was made by Mr. Varney that they are reducing the impervious surface. P. Monziona went on to say that he sees nothing in the ordinance that prohibits the construction of this garage on this lot. In other words, he thinks they have the right, given the size of the lot and the house and everything else; there is nothing in the Lakeshore Residential area that prohibits the construction of the garage on this lot. The problem is given the size and configuration of this lot, where the leach bed is, where the ROW comes in, and where the house is located, in order to locate this garage in an appropriate manner on the lot, they have to bring it well into the setback, the same as the non-conforming house is now. The application is right that it seeks a variance to build something in the setback. If he had a way to add more land tomorrow, where he could build this and stay outside of those setbacks, he could put that garage up there; there is nothing in the regs. that keeps him from building that garage on that property. He needs to put it there in the setback; there is already a house in the setback. The focus is just in whether given the configuration of this lot as it exists and what is on there, whether as they go through the criteria, it is going to work. If you want to put another building on a lot in Lakeshore Residential where you already have a non-conforming building to begin with and you want to put another one on there... T. Kinnon agreed that it would be an accessory building. He agrees that the building is allowed. P. Monziona added that he has to go so close to the property line, but there is already a building that close to the property line. T. Kinnon is also concerned that there is already a building that is so close to the property line, and now the variance will extend that non-conformity. P. Monziona agreed.

VARIANCE WORKSHEET

1 – L. LaCourse stated that the variance **will not** be contrary to the public interest. The Board has heard from some of the neighbors and they are quite satisfied with what is being done; there is no reason to think it will lower the value of this or any of the surround properties or have any negative impact at all. T. Kinnon agreed. T. Morgan also agreed and added that the reduction to the impervious surface and the other runoff controls are definitely within the public interest to protect the quality of the lake on which this structure is built. P. Monziona agreed for all the reasons stated.

2 – T. Kinnon 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. Even though he has reservations about where it is on the lot, he does feel that this project will enhance the property and will definitely be a benefit for water runoff to the lake. In that respect it does help the safety and health of the district. T. Morgan agreed. P. Monziona agreed and added that especially in the Lakeshore zone

the Board has to make sure they are really pushing the zoning ordinances and rights of the town. However, as he stated earlier, there is nothing that prohibits the construction of a garage. Given the unique characteristics of this property, the only location for the garage is where it is depicted in the proposed drawing. There is already a building into the setback there, so he does not see having the garage there will in any way be contrary to the Master Plan, the ordinance which permits the variance, or the convenience, health, and safety. L. LaCourse agreed.

3 – T. Morgan stated that by granting the variance, substantial justice **will** be done. Mr. Robertson has a right to put a garage on the property, and what is being done is an improvement to the property. The difficulty is that it is a small and non-conforming piece of land that is difficult to put a garage on; the proposal is a good one. P. Monziona agreed and added that the unique characteristics of the lot establish that there is no other appropriate way in which to do this. L. LaCourse and T. Kinnon both agreed.

4 – P. Monziona stated that the request **will not** diminish the value of the surrounding properties. The abutters who spoke are in favor of the application; there was some concern about the height of the garage that could perhaps have a negative impact on the value of the abutting property, but there is a representation from the applicant that what is proposed here by the application is a 26 X 26 garage of one story; there is no evidence in the record that in any way shows that will diminish the value of surrounding properties. L. LaCourse, T. Kinnon, and T. Morgan all agreed.

5 – L. LaCourse stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there **is no** fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use **is** a reasonable one. The proposed use is obviously very reasonable and the physical characteristics of the property are extremely limiting. There is not an ability to put it in another place; they could move it forward a little, but it wouldn't make a difference. T. Kinnon agreed, as did T. Morgan and P. Monziona.

T. Kinnon stated that based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. T. Morgan, P. Monziona, and L. LaCourse all agreed.

T. Morgan made a motion to approve the application for Case #Z10-28 with the requirement that the structure be limited to one story. The approval is based on the granting and establishment of the new Right of Way. T. Kinnon seconded the motion which passed with all four votes in favor and no opposed.

VIII. OTHER BUSINESS

1 – Previous Business – There was no previous business.

2 – New Business – There will be a joint meeting of the Planning Board and the Zoning Board of Adjustment on Tuesday, November 9, 2010 at 6:00 p.m. The purpose of this meeting will be to discuss the Zoning Regulations and possible amendments to them, so members should bring suggestions. After that meeting, Attorney Sessler will meet with this Board in a non-public session to discuss some issues.

The Planning Department has received a letter from the Law Office of J. Brandon Guida, PLLC, representing Carol Locke and Richard Locke, and Cindy Balcius and Jill Royer, all of Prospect Mountain Road. They are requesting a rehearing of Case #Z10-26 (Michael and Kathleen Currier). The letter was hand delivered to the Planning Department on November 2, 2010. In the case in question, the ZBA granted a Special Exception for a Corn Maze and a Variance for the Outdoor Function Facility. Copies of the letter were made for the members. The Board is entitled to consult with town counsel on this, so before the meeting on November 9, 2010, members should take the time to look at the letter and get their questions answered by town counsel. P. Monziona thought that when a request like this comes in that Attorney Sessler is made aware and then he works

with the Planning Department to make sure all the statutes are met so the Board does not blow a deadline. P. Monziona requested that J. Dever makes sure the rehearing is scheduled to meet the deadlines. According to the statute, there is a burden on the requester to get their request in within a certain time frame as well as a requirement on the Board to rule on whether they will rehear the case within a set timeframe. The members discussed the statutory time frame in which they must rule on a requested motion for a rehearing; per RSA 677:3, they have 30 days from the date of submission in which to rule on whether they will rehear the case. T. Kinnon asked if there is a specific application to request a rehearing; J. Dever answered that there is not. P. Monziona asked J. Dever to check with Attorney Sessler to see I what the Board is required to do procedurally with regard to the request for rehearing in this case. After discussion the members decided to hold this motion until the meeting on November 9, 2010; following the joint workshop with the Planning Board, they will have a meeting with Attorney Sessler, after which they will meet to decide whether to entertain the request for rehearing. This is all assuming that proper notice can be accomplished prior to November 9, 2010; J. Dever will check on notice requirements.

T. Kinnon made a motion to schedule consideration of the request for rehearing of Case #Z10-26 for November 9, 2010, such meeting to follow the workshop session and non-public session with town counsel provided notification of the public can be accomplished in that time. T. Morgan seconded the motion which passed with four votes in favor and no opposed.

3 – Minutes

T. Kinnon asked if a question could be asked of town counsel as to the number of members needed to vote on approval of minutes. This could become a significant issue if there is a large turnover on the Board.

August 5, 2010

T. Morgan made a motion to table the minutes of August 5, 2010 until more members who were in attendance at that meeting are present, or until there is an opinion of counsel to allow fewer members to vote on approval of the minutes. L. LaCourse seconded the motion which passed with four votes in favor and none against.

October 7, 2010 (Regular Meeting)

T. Morgan made a motion, to defer consideration of the minutes of the October 7, 2010, Regular Meeting until such time as the members have more fully reviewed them in light of the letter that has been received. L. LaCourse seconded the motion with passed with four votes in favor and none against.

October 7, 2010 (Workshop Session)

The second line, first paragraph under Call to Order was corrected to read "...minutes of August 5, 2010, August 12, 2010, and September 2, 2010, as well as..."

T. Morgan made a motion to approve the workshop minutes of October 7, 2010, as amended. L. LaCourse seconded the motion which passed with three votes in favor (T. Kinnon abstained).

4 – Correspondence

There was none.

IX. ADJOURNMENT

T. Morgan made a motion to adjourn. L. LaCourse seconded the motion which passed without opposition.

The meeting adjourned at 9:26 p.m.

The next regular meeting will be December 2, 2010. There is a joint workshop with the Alton Planning Board scheduled for November 9, 2010, at 6:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session