

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT**

**Public Meeting
January 7, 2010
APPROVED 2/4/10**

I. CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Paul Monzione, Chair.

II. INTRODUCTION OF BOARD MEMBERS

Paul Monzione, Chair, introduced the following:

Stacey Ames, Planning Assistant
Sharon Penney, Town Planner
Timothy Kinnon, Member
P. Monzione, Chair
Stephen Hurst, Vice Chair
T. Morgan, Member
Lou LaCourse, Member

Representative from Board of Selectmen not present

III. APPOINTMENT OF ALTERNATES

None required

IV. STATEMENT OF 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

The date on the agenda should be changed to January 7, 2010.

T. Kinnon made a motion to approve the agenda as submitted. T. Morgan seconded the motion, which passed by unanimous vote.

VI. CONTINUANCE

Case #Z09-16 Carl and Donna Backman	Map 79, Lot 37	Special Exception 490 Rattlesnake Island
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Application submitted by Tom Varney of Varney Engineering, LLC on behalf of the applicants Carl and Donna Backman to request a Special Exception from Section 300 Article 320 (B) to tear down and rebuild the front of an existing cottage in the existing footprint however expanding the living space up to meet the roofline of the newer back part of the cottage. This parcel is located in the Lakeshore Residential zone.

S. Penney read the case into the record.

Tom Varney of Varney Engineering came to the table with Mr. Carl Backman. This property is on Rattlesnake Island. The Board has the plans; he will go over what they are doing as they go along. The Backman’s purchased the property in 2000 and found it to be in a dilapidated condition. The back half of the structure has been demolished and rebuilt on sonna-tubes. This raised the existing cottage out of the dirt. The front half was used as living space to enjoy the property while rebuilding the back. The Backman’s are now ready to rebuild the front of the cottage and tie it all together.

The proposal now is to tear down the front half and rebuild it to connect to the back half. The finished construction will be a single unified building within the same footprint and size, except the roofline will go up some to match the back half. The original deck that was on the cottage when purchased will be re-established.

A state approved septic system was installed in 2003.

The existing platforms, fire pit, and shed within the fifty foot setback area will be removed and placed behind the fifty foot line. The old dock with attached deck was replaced with a new dock in 2003.

T. Varney went over the eight requirements for a Special Exception. In answer to #1, which is that a plat has been submitted; a plot plan has been prepared in accordance with the Site Plan Checklist. Number 2, the specific site is an appropriate location for the use; the proposed change is for an existing building. Number 3, factual evidence is not found that the property values in the district will not be reduced due to incompatible uses; the cottage is very similar to other properties in the neighborhood. Number 4, there is no valid objection from abutters based on

demonstrable fact; the proposed change is an improvement to the property. Number 5, there is no undue nuisance or serious hazard to pedestrian or vehicular traffic; this does not impact vehicular or pedestrian traffic. Rebuilding the front of the cottage will make the property safer for people. Number 6, adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use of the structure; the property has adequate water and a state approved septic system. Number 7, there is adequate area for safe and sanitary sewage disposal and water supply; the septic system was installed in 2003. Number 8, the proposed use of the structure is consistent with the spirit of this ordinance and the intent of the Master Plan; the use of the property remains residential and with improvements made.

Mr. Varney went on to explain that this property is in the Shoreland Protection zone. They submitted an application for that and received an answer that they do not need a Shoreland permit due to the fact that they are rebuilding the cottage without excavating equipment and it's in the same footprint.

Mr. Varney showed pictures of the new construction in the back, and of the front, which is to be torn down and blended back in with the back to create one homogeneous building. He also had pictures of the cottage taken in 2000, when the Backman's purchased it. The photos were circulated to the members.

They didn't have a building permit when they rebuilt the back half, so they have obtained a retroactive permit which was signed on December 17, 2009.

Mr. Varney has revised the septic design which is amended to connect this house to the existing septic because this house never got rebuilt in the area in which it was originally designed. He is amending that to show a grinder sewer pump that will pump the effluent up to the existing pump chamber that was put there in 2003.

T. Morgan asked to revisit the issue of the septic system. The DES, in a memo that was sent to them, said that if the ridgeline changes, that means you have to submit a new septic plan. He asked if this was a new plan submitted to the DES that contemplates the changes to the roofline. T. Varney answered that it doesn't go into that requirement because the septic is already there. S. Penney stated that the memo was a 2008 change, which might apply to the next case. S. Hurst asked if the current building was hooked up to the septic. T. Varney answered that it is not, at this point; there is an outhouse.

T. Morgan asked when the original deck was taken off the front of the building. Mr. Backman answered that it was late 2002 or 2003; it was not safe to be on. T. Morgan asked if that was the deck that is going to be replaced; there are a couple of decks. T. Varney answered that if they look at the proposed plan, they have it all finalized into one deck on the front of the new cottage. Mr. Backman explained that the decks that are shown (in the photos) are actually part of the original dock that was there. They just put it on the ground to have something flat to put a chair on. He has no real desire to keep those once they have something else that is usable. T. Morgan asked what kind of footings were under the old deck. Mr. Backman answered that it was just a couple of cinder blocks thrown on the ground. T. Morgan asked if the new deck would have

some other form of footing. Mr. Backman answered that the contractor would put in sonna tubes.

S. Penney had understood that there was to be no deck. T. Morgan stated that he was concerned about whether the grandfathering had been lost. S. Ames said they did lose their grandfathering; they pulled a permit back in 2003 to replace the deck. They tore down the deck but did not replace it in kind. That building permit is no longer valid and because it wasn't replaced, it lost its grandfathering and is now required to meet the current setbacks from the shoreline, which it does not. They will have to come in for a separate variance for that. S. Penney commented that she thought it had been ascertained that there was no deck being built at this time because the previous go around that they had said that if they were going to put one on, they would have to come back for another go around. T. Morgan asked if they would have to go to the DES before coming back to the ZBA. S. Penney thought they would because they have lost their grandfathering, and they are already within the thirty and fifty foot setbacks from the lake. This will need to be sorted out.

T. Varney stated that they would ask for a variance for the deck, so they should not include the deck in what they are asking for this evening. T. Morgan clarified that they were not asking for the deck this evening; they are going to go jump through the hoops and come back for that. T. Varney said that they would need a variance for that because it had been abandoned and they would need a variance from the Town of Alton. S. Penney commented that they would probably also need a permit from DES. T. Varney disagreed; you can go twelve feet with a deck without getting their approval. T. Kinnon recalled that they had a case earlier in the year where they ran into that – a permit was not required to come out twelve feet.

P. Monziona stated that he is having a little bit of a tough time understanding completely what the Special Exception is seeking for this structure. He has looked at the pictures, he's looked at the plan, and he has heard the description, but he still doesn't fully get it. First of all, this building looks like first the back part was torn down and rebuilt, then the front part was torn down and rebuilt, and it looks like a new building has been placed here where there was otherwise a grandfathered structure. T. Varney said that only the back half is new; the front is the original. P. Monziona asked if the back half was done pursuant to any Special Exceptions. T. Varney answered no; it was behind the thirty foot setback line. P. Monziona went on to clarify that it stayed within the footprint and because it was within the setback no Special Exception was required and it was just built. T. Varney said that was correct to his knowledge.

P. Monziona asked what the reason is that the building is now non-conforming. T. Varney answered that it is because it is within the fifty foot setback of the lake. P. Monziona asked if that was the only part of the structure that is non-conforming. T. Varney answered yes. P. Monziona said they are seeking this variance under 320 (B), so they want to do an expansion of it? T. Varney said no; the reason they are asking for the special exception is because the building is there, and the old and new are in the same footprint, within just a few inches. They're not expanding so they don't need a variance. What they need is a Special Exception to tear this down and then build it up. P. Monziona asked if they were going to replace it without expanding its dimensions in any way. T. Varney answered that it would go up. P. Monziona stated that when he asked about expansion, he did not mean to limit it to just the footprint. Under 320 (B):2a, "no non-conforming structure can be enlarged or altered in any way which increases

non-conformity except as provided by this ordinance.” He asked if they were staying within the height restriction. T. Varney said yes; all they are doing is matching the existing part, which is a little shorter, to the new part. They’re trying to blend it in. They’re not going up; they’re not going to go up with another story. They’re just trying to match the new building, which was raised to get it out of the dirt. They’re not trying to expand the building; they’re just trying to connect it to the new building.

P. Monziona asked if anything they are doing would put them further into the setbacks, or if they are just staying within the existing footprint. Mr. Backman answered that they are trying to pull it back if anything, to try to get more space in front. T. Varney said they are not going closer to the lake. Mr. Backman said there is a ledge behind it that comes up rather quickly; there wasn’t much room there. He went on to add that he thinks the island stipulates that you can’t have a two story building.

T. Morgan stated that what would happen here if they grant the Special Exception for the rehab of the front portion, they would then go and get a building permit to do that. He understands that they have a retroactive building permit for the back portion. T. Varney agreed and said they would have to get a new permit for the new portion in the front.

P. Monziona clarified that they are going up, but only to match the roofline of the new part of the structure which is already built, and is higher than the old part. They will tear down the old part and build it back up to match the new part that has already been built there. Under (C) “a structure that is non-conforming due to violation of setbacks may not be expanded upwards or beyond the existing roofline or downward below the existing sill without first obtaining Special Exceptions.” They are here for that. They don’t grant it unless they find that it does not have an adverse impact on abutters within 500 feet. The other thing is that it will be accommodated by a water supply and sewage disposal system approved by NH-DES Water Supply and Pollution Control Division. They have a septic design that is going to be part of what they are doing, and they are going to seek approval of the state for it. T. Varney said they are going to amend the existing septic design; it has already been installed. P. Monziona asked if that would be sent to the state for approval as amended. T. Varney said it would. P. Monziona said that a condition could be that they would obtain approval for that septic.

P. Monziona asked other members if they had any questions. T. Kinnon asked if, when an amended septic plan is sent to the state, do they approve it or just accept it. T. Varney said they approve it; they take the existing approval and add an “A” on the end of it. It’s more of a formality; they add the “A” and then send it back real fast. They don’t really review it or go through the whole process. T. Kinnon said he understood; he did not want them to be putting a condition on that could not be met.

L. LaCourse asked for clarification on where they are with the porches and decks. P. Monziona clarified that the application now is representing that there would be no decks appended to this structure, as they are currently applying. L. LaCourse reiterated that the decks shown in the pictures will not exist. Mr. Backman said they will get rid of those when they build the deck; those are just portions of the old original dock that was there. L. LaCourse pointed out the decks depicted on the computer generated image; T. Varney said they are excluded for this plan.

S. Penney stated that the interim Building Inspector had gone out and made a visual inspection of the back part of the building that has already been done.

P. Monziona asked the applicant if there was anything further he would like to add. There was not. P. Monziona asked the Board members if they had any further questions; they did not.

P. Monziona invited comments from the interim Code Enforcement Officer, John Dever. He introduced himself and stated that he did go out and examine the work that was previously done. That was part of the process to ensure that it was built up to code because it had been built without a permit. He also wanted to check that the electrical work that had been done meets the code, and that is the case. He and Mr. Varney have sat down and gone over what the plan is and what the requirements of the code and ordinances are going to be. The issues of the deck and the septic have been addressed. Amending the plan is essentially the process. He has nothing to add to it; most of the salient points have been covered.

P. Monziona said they did have questions when this application was first before them; whether there were code enforcement issues or applicable building permits for what had been done previously. Now it seems those have been taken care of. Mr. Dever said they have been resolved.

P. Monziona asked for public input in favor of the granting of this application. There was none. P. Monziona asked for public input in opposition to the granting of the application. There was none. Public input was closed.

WORKSHEET

T. Kinnon stated that a plat **has** been accepted by the Planner in accordance with Alton Zoning Ordinance Section 520B and a recommendation has been made. All members agreed.

P. Monziona stated that the specific site **is** an appropriate location for the use. The use has been ongoing for some time, non-conforming for the reasons that were presented, but nonetheless appropriate for use as a cottage or a structure on the island as it is. This is an appropriate location for the use. T. Morgan agreed, stating that the use is not changing, so it is certainly appropriate. All members agreed.

S. Hurst stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. He thinks it will be an improvement to the property appearance-wise, and structurally by removing the unsafe deck; it's definitely going to add to the property value. T. Morgan said that no evidence has been presented with regard to property value, so subjectively he would agree that it would enhance the value. P. Monziona stated that no one came forward and presented anything that would affect their properties adversely; in fact, when this is finished it's going to significantly improve the property and therefore the surrounding property values. All members agreed.

T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact. No one appeared to object to this. All members agreed.

L. 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. P. Monziona stated that these are not issues with regard to this application. All members agreed.

T. Kinnon stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. There is a relatively new septic system installed with modifications that are going to be made. There is ample water supply, and the utilities are existing on site. P. Monziona agreed as long as the amended septic design is in fact filed with the state and then implemented. S. Hurst agreed, but thinks they should make that a condition of the approval, if it is approved. All members agreed.

P. Monziona stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. Relating to the above criteria, that is assuming that the amended septic design is submitted to the state and implemented. All members agree.

S. Hurst stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. All members agree.

P. Monziona asked for a motion on Application Z09-16.

T. Morgan made a motion for the Board to approve Case Z09-16 with two understandings. The first is that the decks depicted on the handouts will not be appended to the building based upon this Special Exception approval. The second is that approval of the amended septic design be submitted to DES. S. Hurst seconded the motion.

P. Monziona asked if in the motion T. Morgan had meant “no deck,” whether it is the one depicted or not, be put on the structure. T. Morgan stated that his meaning was that no deck be appended to the structure until the applicant comes before the ZBA to request a variance.

The motion above was amended to:

T. Morgan made a motion for the Board to approve Case Z09-16 with two understandings. The first is that no deck be appended to the structure until the applicant comes before the ZBA to request a variance, and said request is approved. The second is that approval of the amended septic design be submitted to DES. S. Hurst seconded the amended motion. The vote on the motion with the conditions as amended was unanimous.

VII. CONTINUED NEW APPLICATION

<p>Case Z09-20 Charles and Catherine McCauley</p>	<p>Map 52, Lot 1 and 2</p>	<p>Area Variance 167 Route 11D</p>
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Application submitted by Charles and Catherine McCauley to request an Area Variance from Article 400 Section 412A and B, to allow a boundary line adjustment that will render Lot 1 less non-conforming in area however remain non-conforming in frontage. Lot 2 shall remain non-conforming in frontage and conforming in area. This parcel is located in the Lakeshore Residential zone.

Mrs. Catherine McCauley introduced herself and her husband, Charles.

At this point the Board realized they had not accepted the application for the former case, Z09-16, as complete.

S. Hurst made a motion to accept the application for Case Z09-16 as proposed. T. Morgan seconded the motion, which passed by unanimous vote of the Board.

Back to Case Z09-20, P. Monziona asked members if they had reviewed the application, and if there was a motion to accept it as submitted. P. Monziona read the case into the record.

T. Kinnon, for the sake of complete openness, informed the Chair that at one point in this past year for several months he was an abutter to this property. He rented a house at 157 Route 11D. He does not feel that would affect his judgment at all in this case. P. Monziona asked if there was anyone on the Board who felt that Mr. Kinnon should recuse himself, as he had been an abutter to this property at one time. No one on the Board felt so. P. Monziona asked the applicants if they felt there would be any adverse impact. They did not, and indicated that they were willing to proceed.

Mrs. McCauley asked P. Monziona to clarify what he had read into the record concerning Lot 2. He acknowledged that he might have misspoken, but clarified that Lot 2 would remain non-conforming in frontage and conforming in area.

P. Monziona asked members if they felt the application could be accepted as complete.

T. Morgan made a motion to accept the application for Case Z09-20 as complete, as submitted. S. Hurst seconded the motion which passed by unanimous vote.

Mrs. McCauley stated that they were there to request a variance for Lot 1 and 2 on Map 52, located on Route 11D in Alton Bay. They currently have an application before the Board for a boundary line adjustment. The variance is requested from Article 400 Section 412A and B:2 of the zoning ordinance to permit the expansion of lots. The variance they are looking for is for the frontage and area requirement for Lot 1 and frontage requirements on Lot 2. Denial of the

variance would result in unnecessary hardship to them because Lot 1 is unbuildable in its current state. They could not change lot sizes to meet zoning regulations due to State of New Hampshire requirements. The State of New Hampshire requires for approval of subdivision calculation of slopes, creating a lot size for Lot 1. Lot size in the Lakeshore Residential area is 30,000 square feet. Their lot will be 25,034 square feet, with a frontage of 131.68 feet. The lot is 4,966 square feet short of what the requirement is and where 150 feet is required for frontage, they are eighteen feet short for that requirement. Expansion of the lot would not be a nuisance to the public or private rights of others because other homes on the street have similar lot sizes and frontage. Granting the variance would give relief to the owner and is reasonable for such reasonable use because the layout of the lots is created by what the State of New Hampshire requires. Once the adjustment was done it will become a buildable house lot, then they would be able to adjust on the property on Lot 2.

The request is in harmony with the spirit of the zoning ordinance, the Master Plan and the convenience, health, safety, and character of the district within which this is proposed. The lots will not alter the essential character of the locality or threaten the public health, safety, or welfare. The intent of the Master Plan is to keep the rural character of the town. This proposal will keep that intact. The request is not contrary to the public because four lots of record will be combined to create two existing lots of record. Single family homes are a permitted use in this zone, and the property will become more conforming to the zoning requirements. Substantial justice will be done because Lot 1 will be able to have a single family dwelling put on it, and it will increase the tax base.

Granting the variance will not alter the character of the surrounding area. There are no wetlands on the property; a soil expert has verified that there are no wetlands. No abutters are objecting to the request. The request will not diminish the value of surrounding properties because it will improve the area and will allow for improvements for Lot 2. They have received subdivision approval from the State of New Hampshire, and they also have recorded a protected well radius in the Belknap County Registry of Deeds.

L. LaCourse stated that it seems like there is enough land here to allow Lot 1 to meet the 30,000 square foot minimum by just moving the line between the two lots about eighteen feet. He asked for the reasoning behind keeping this lot below the 30,000 square foot minimum. Mrs. McCauley answered that it is because of the requirements of the State of New Hampshire; there are slopes in the back that go up very steep, so when the State calculated it out, they made the surveyor change to meet their requirements. That actually made Lot 1 a little smaller. She would have preferred two nice one acre lots, but because of the state requirements, she couldn't do that. That's why they're here, requesting the variance on the lot size.

T. Morgan asked her to elaborate on that; is it Lot 2 that has the slope off? She answered that it is; the back part of Lot 2 is very steep, on the upper part of the hill. S. Penney handed out topo maps. Mrs. McCauley went on to explain that the existing lot, because of the length of it; they had also purchased a ½ acre lot from the State figuring they could use it for a septic or whatever area for the boundary line adjustment. When the State did their calculations based on the area and the slope, that's how they created lot 1. T. Morgan asked if that ½ acre they purchased was up behind Lot 2. She answered that it is actually up on the New Hampshire Route 11 side. She

indicated a triangular piece on the plan. T. Morgan thought that on one of the maps that shows as the original Lot 1.

P. Monziona asked what the State's part is in determining the lot size here. Mrs. McCauley answered that it is for subdivision approval; they had to submit it to the state. They did test pits and; even though they have two lots of record, when the State figured out the calculations for taking property away from this lot, because of the edge of the slopes, they would only allow that much for the other existing lot. P. Monziona asked if the State's involvement in the configuration of these lots is because of their seeking approval of a septic plan; he is trying to figure out how the state comes into the Town of Alton and talks about how much square footage or how lots should be configured, other than perhaps to say that they could not get a septic design approved unless they have a certain topographical area of land within the lot. Mrs. McCauley agreed that was what was going on. S. Penney concurred; because it is called subdivision approval, it is lot configuration at the state level. P. Monziona voiced his understanding.

T. Morgan asked for clarification of his earlier question. When he had asked the prior question about the lot they had purchased, she referred to it as "the triangular piece". There are two triangular pieces on the map; he asked if she was referring to the westernmost triangular piece, or the one that is down to the southeast, along Route 11D. Mrs. McCauley answered that she was referring to the one up at NH Route 11, which is to the west. He asked if that property was appended to the new Lot 2; she answered that it is a separate lot of record. They purchased Lot 52-1 from the State of NH because parcel A, behind Lot 1, was the original railroad land that the town sold to her father. Because that lot was extra frontage, they figured they would try to square off the lot. They thought it would come out square, but when they had it surveyed after they bought the piece from the state, it ended up not being a rectangle, as they had assumed it would be. T. Morgan asked if they took some portion of the western triangular piece and appended it to Lot 1, would that make the lot conforming, size-wise, and would the state accept that. Mrs. McCauley answered no; they would not be able to get a septic on that by the State's rules. They are the ones who have dictated what her surveyor had to change. T. Morgan asked what she would not be able to get the septic on. She answered on Lot 1. This is what they came up with for a proposal for them.

P. Monziona asked if they were record holders for all three of the lots. Mrs. McCauley said that they are. He asked if they are applying as the record owners of Lots 1 and 2, to alter these lots; she confirmed that.

P. Monziona stated that they are seeking to variance from Section 412A, which is "the minimum lot area shall be 30,000 square feet." He asked what lot is going to have what square footage to require this variance. Mrs. McCauley said that Lot 1 requires the variance. P. Monziona asked what the square footage of Lot 1 would be if the variance is granted. She answered that it would be 25,034 square feet. He asked about the total square footage of Lot 2; it would be 56,559 square feet. He asked about the current square footage of the lots; the information is on the plan. One is 4,000 something and one that is over 77,000, and if they do the boundary line adjustment they would try to create two at least 30,000 square foot lots and try to meet the minimum, except because they need a septic system on both, and because of the unique configuration of the steepness of the land, and the topography, the state is telling them they don't have enough land

that is non-sloping to get a septic approval, and therefore they have to go about 5,000 square feet less on the one lot, and that's why they need the variance. Mrs. McCauley said that was correct; they have an existing house on Lot 2; they want to replace the septic there but they didn't want to do anything, hoping they would get the variance so they could create a buildable lot out of Lot 1.

P. Monziona asked if the way they are going to do this would have any adverse affect on the existing house and septic on Lot 2; it will remain well above the lot size requirement, the septic is working. It is just Lot 1 that needs the area variance because of the septic issue and the topography of the land.

T. Morgan stated that both lots have inadequate frontage on the road; that is the other thing. P. Monziona agreed and asked about the other issue of variance. When these are created into two lots, as they are configured, what will the frontage of each lot be; the requirement is 150 feet. Mrs. McCauley answered that Lot 1 would be 131.68, which is about 18 feet short. Lot 2 is 144.31 feet. P. Monziona asked if both lots would have driveway access to 11D; Mrs. McCauley answered that they would. She spoke to the highway supervisor several years ago, and at that time they were into having joint driveways; having just one driveway for both lots, which she is not opposed to. It seems now the town really would like separate driveways. There is a cut in from an old logging road that goes under the old railroad bed on the land at the back that the box company used to own and take lumber out of. P. Monziona clarified that the way they are proposing to configure both of these lots, each would have its own driveway onto 11D; Mrs. McCauley said that was correct. P. Monziona asked if each would have less than 100 feet of road frontage; Mrs. McCauley said that was correct.

P. Monziona asked the applicant if they would like to add anything else. Mrs. McCauley answered that she thought they had it all covered.

P. Monziona asked the members if they would like to ask any questions. T. Morgan asked if the triangular piece to the west is a buildable lot as it stands; Mrs. McCauley answered that it is not. It originally belonged to the abutting property; Mr. Rollins owned it. He had given it to the State of New Hampshire so they could straighten out the road because it was a sharp turn. When they built the new highway behind them, the State decided they had no use for it, and it has stayed on the books all that time. They decided to purchase it from the State to try to square up their lot and get additional frontage.

L. LaCourse asked about the other smaller triangular piece – 459B? According to the map, it is not a piece of Lot 1. This is the piece that abuts 11D. He asked if that was the original Lot 1. Mrs. McCauley said that the original Lot 1 is that little triangular piece; it's 131 feet and 72 feet by the abutter, and it abuts the old railroad bed by 115 feet. L. LaCourse asked if that is now part of Lot 1. Mrs. McCauley answered that she wants to take some of the land from Lot 2 – if you look at where the plan is shaded, that whole area is going to be added to Lot 1. It says parcel A, and Final Tax Map 52, Lot 1 – that whole thing will be added to the existing Lot 1, which is that small triangular piece.

T. Morgan asked if the triangular piece without a reference number to the west is not a buildable lot, he doesn't understand why they can't extend Lot 1 as depicted on the final tax map to the

west and then they would be in conformity with regard to square footage. Mrs. McCauley asked if he meant to take more land from Lot 2. T. Morgan said that if they take the northern boundary as currently shown on the Final Map 52 Lot 1 and extended that into the triangular piece to the west, that would bring Lot 1 into conformity with square footage. Mrs. McCauley said that it would, but then it would throw off all the calculations for Lot 1. If she takes the frontage from Lot 2... T. Morgan asked if she had not told them that piece was a separate stand alone lot. She answered that it is a separate lot because they purchased that triangular piece from the State. It is a piece of their ROW that they purchased in the back. T. Morgan showed on the plan how he is suggesting they extend the line. Mrs. McCauley said she would love to, but the State of New Hampshire, because of the slopes on Lot 1, in order to get the subdivision approval for septic, will not allow that. P. Monziona asked if she is saying that Lot 2 includes that triangle now, in their proposal. She answered that it would need it. P. Monziona confirmed that the plan they have been given that they are seeking approval on, if granted, would configure Lot 2 to include that triangle. Mrs. McCauley said that was correct. P. Monziona said it would no longer be a stand alone, and that it is needed to get to the total square footage she said Lot 2 was going to have. Mrs. McCauley agreed. P. Monziona confirmed that the other little parcel, presently depicted as original Map 52 Lot 1, is going to be incorporated into her Lot 1, and that is where Lot 1 is going to get its frontage on Route 11D. Mrs. McCauley said that was correct. P. Monziona asked right now, before any of this is done, how many lots there are. Mrs. McCauley said there are two lots of record. S. Penney asked if they had been bought and merged. Mrs. McCauley stated that deed has it all in separate parcels; Lot 52-2 is two parcels, the old railroad land. First they bought the triangle on the street from the State, and then she approached the state to purchase a piece of their ROW.

P. Monziona stated that their application right now, when finished, is seeking to create two lots of record from two lots of record. Mrs. McCauley said there are three deeds. P. Monziona said there are three lots of record if there are three deeds. When they are done with all this, they are going to redraft these deeds to create two lots of record from what are now three separate parcels, each of which has its own deed. Mrs. McCauley said that was right; Lot 1 is already an existing lot of record, and Lot 2. They are going to take that last parcel they purchased and put it to the existing house. P. Monziona asked if their application was telling the Board that when all is said and done, they will end up with these two lots as configured on the plat they have submitted, with road frontage as depicted, and the square footage as depicted on the plat. Mrs. McCauley answered that was correct.

P. Monziona invited further questions. Mrs. McCauley stated that this is family property; she grew up here. It was her mother's hope to have it stay in the family. She has two sons; she would like to retire up here eventually. P. Monziona said that if this were to be granted, it would create two separate independent lots of record that could be bought and sold and occupied by whoever would buy them and own them. S. Penney stated that in the Planner Report, the Conservation Commission department head was asking about the access, according to them through apparent existing wetlands in the front area of Lot 1. Mrs. McCauley said they had a soil scientist come out to the property and ascertain that. S. Penney confirmed that they could get their access off 11D to Lot 1; Mrs. McCauley said they could. P. Monziona said they had their survey done by Brian Bailey and Associates; all that's out there has been verified on the engineered survey. Mrs. McCauley confirmed that he had done all that as well.

P. Monziona invited public input in support or in favor of Case Z09-20 application being granted. There was none.

P. Monziona asked if there was anyone who wished to speak in opposition to the application being granted. There were none.

Public input was closed.

WORKSHEET

S. Hurst stated that the variance **will not** be contrary to the public interest. T. Morgan stated that he agrees, even though they are creating two non-conforming lots, they are less non-conforming. He thinks it is a well thought through project. P. Monziona stated that he agrees because these lots are going to be improved in terms of overall configuration. All members agreed.

T. 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. As the applicant pointed out, there are several other lots of similar size and nature in this area, and he thinks it is in keeping with the spirit and plan of that area. P. Monziona also agreed, stating that he thinks 5,000 square feet on one, and the other 131.68 feet and a 144.31 feet instead of 150 feet is not substantial enough to adversely affect the convenience, health, character, or safety of the district. All members agreed.

L. LaCourse stated that by granting the variance, substantial justice **will** be done. T. Kinnon said that he agrees because it will allow for the owners to have a better use of the entire property that they own and for the neighborhood, he thinks it will help the character of the neighborhood. P. Monziona agreed and stated that by granting the variance substantial justice will be done because the configuration of these lots and the topography out there which would prevent a septic system from going in without a variance means that by getting the variance substantial justice will be done so that the owners and the applicant can have a buildable lot with a septic. T. Morgan said he believes substantial justice is done because three lots are properly and well merged into two lots. All members agreed.

T. Kinnon stated that the request **will not** diminish the value of the surrounding properties. If anything, it will enhance the value of the surrounding properties to have two lots that are more conforming than the one that would be greatly non-conforming. P. Monziona stated that he agrees with that for those reasons. Taking the three lots and turning them into two, making them usable will enhance the value of surrounding properties. They have seen nothing in the record, and there are no abutters or objectors to establish that any value would be diminished. All members agreed.

P. Monziona stated that an area variance **is** needed to enable the applicant's proposed use of the property given the special conditions of the property, and the benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. When they look at the topography of one of these lots, even though there

may be land out there where this could be divided differently, it can't be divided differently if it is going to have a septic and the applicant seeks to have two buildable lots that are used for residential purposes. This is the only way that it can be done, and the Board went into various questions about using the property in a different way, and he is satisfied that the answers establish this is the only reasonable, feasible way to do this. T. Morgan agrees that the special conditions of the property drive this decision. All members agreed.

S. Hurst stated that based upon above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. P. Monziona agrees, if literal enforcement would result in them not being able to have these two buildable lots with a septic. All members agreed.

P. Monziona asked for a motion on Case Z09-20.

T. Morgan made a motion that the Board should accept and approve the application Z09-20 as submitted. S. Hurst seconded the motion, which passed by unanimous vote of the Board.

VIII. NEW APPLICATIONS

Case Z10-01 Lowell and Dorla Hall	Map 34 Lot 33-91	Special Exception 3 Verna Lane
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Application submitted by Roger Sample on behalf of applicants Lowell and Dorla Hall to request a Special Exception from Article 300, Section 320 A-4, B2-A, and C to allow the expansion of a non-conforming structure to include a study as well as a half bath on the second floor. This parcel is located in the Alton Bay Christian Conference Center in the Residential zone.

Application and all other materials have been provided to the members. They reviewed the plat prior to making a motion to accept the application as complete at this time.

Mr. Sample came to the table.

T. Morgan asked Mr. Sample if he has seen the Planner's comments. S. Penney said that he has not yet, but he can. She provided him with a copy. T. Morgan wondered if after seeing the Planner's comments he would still want to go forward this evening. Mr. Sample read over the Planner's comments and stated that he would still like to proceed; basically they are looking for a Special Exception and he doesn't see anything in the Planner's comments that would preclude them from getting one. P. Monziona pointed out that the application has not yet been accepted as complete, so they have not yet begun a review of this application. As a preliminary matter, Mr. Morgan has pointed out that the applicant should review the Planner's comments, which he now has. He can see in the comments information that the Board now has about this being under a Cease and Desist, and problems with the building permit. When the Board rules on this application, if it is accepted as complete, and they begin the process, this application will be seeking the Board to apply the criteria of Section 320 A-4, B2-A and C. At least two of those deal with a determination on the Board's part as to whether there is going to be any increase or detrimental impact on the neighborhood. One of the things they would be considering is, if there

is a Cease and Desist, and construction going on that has not been in conformity with the requirements of the Town in terms of building permits, they may consider those in determining whether this will have detrimental impact on the neighborhood, especially in the Christian Conference Center. If they find that it will, then they may find that he does not satisfy the requirements for the variance. He is not saying they will or they won't; they haven't gotten into it. They haven't even accepted the application. They're offering an opportunity to perhaps have him consider whether he wants to proceed, knowing that, or whether he wants to take an opportunity to maybe address the concerns of the Planner, and seek to come back at another time when he might not have the same circumstances for the Board to consider whether this poses a detriment to the neighborhood.

T. Kinnon addressed the Chair, stating that even beyond that, he is concerned with hearing a case where there is an existing Cease and Desist order on the property. P. Monziona stated that he thinks the applicant has a right to insist on an application going forward, and he is not aware of any specific prohibitions on the Board's part that would say they can't review the application because of this circumstance; maybe there is such a rule. Maybe Mr. Kinnon is correct and they can't go forward, but if they were to go forward they would look at all facts and circumstances surrounding this application. They would look at the criteria and apply them, and if they determined that the application, given the current circumstances, and the information they are given, including that concerning the building permit, means that this is going to have a detrimental impact on the neighborhood, then the applicant sees the regulation. The Board can't grant a variance if they find that to be the case.

P. Monziona stated that it is entirely up to the applicant whether he wants them to proceed, but he thinks Mr. Morgan suggested he look at the considerations of the Planning Department, and those comments and take an opportunity to address those before he has the Board make a decision.

Mr. Sample stated that the Board is not granting a building permit; it would just be a Special Exception. He started the process off with the criteria, and it meets all of the criteria. Even to leave today with a Special Exception does not acquire a building permit.

P. Monziona voiced understanding and explained to the applicant that in order for the Board to grant the Special Exception, and he has referenced the regulations in the application and cited to the right ones, they specifically say that the ZBA will not grant a Special Exception unless the proposed expansion is clearly not a new use, and will not have an increased detrimental affect on the neighborhood. If they are to look at the facts and say that they have a building going on that is under Cease and Desist and is being built without a building permit, that might form a basis for a determination that that has a detrimental impact on the neighborhood, where you have construction going on that is not within the requirements of the town, with a building permit to insure safety and compliance and all the things that building permits are for. He thinks that is an issue they will take into consideration when they determine whether to grant the Special Exception or not.

P. Monziona explained that if the application is denied, he is not sure where that leaves the applicant in terms of trying to rectify it whereas if he has an application that is withdrawn or

continued until such time as other issues can be addressed, he may be in a better position. He thinks the Board is just offering the applicant that opportunity if he wants to take it.

T. Kinnon commented that the first case tonight is an excellent example of what they are trying to talk about. The first case came before the Board a few months ago with some permitting issues. At that time, they decided to continue their hearing until they were able to resolve the permitting issues, and then they came back. The Board was able to make a determination tonight because the permitting issues were cleared up. He personally could not make a determination tonight with a Cease and Desist order on the property. With that in mind, he would highly recommend that the applicant request a continuance, getting this issue resolved with the Building Inspector, then coming back. Once the Board makes a determination on a case, in order for the Board to re-hear it, you have to present new evidence. If all you are doing is re-presenting the evidence, but with cleared permits, they can't accept that application for a re-hearing.

P. Monziona addressed the applicant, stating that he had been here for the first case. That applicant had building permit issues; the Board provided an opportunity, like they are doing now. It took a couple of continuances; they put it off until the applicant was ready. He came in with a Building Permit, retroactive, he presented the case, the decision was favorable, and it worked out well for the applicant. They told that applicant at the time the same thing they are saying now and that is that if construction is going on that is not in full compliance with the town requirements for building permits, that is a factor they can take into consideration as they apply the criteria to see if he is entitled to a variance.

The applicant stated that maybe he would go for the continuance. He can clear up a lot of issues, and they have plenty of time. They could move forward, but he thinks they might do better to request the continuance and strike a few things off the fire. P. Monziona said they might be able to address some of the issues and he thinks as they do, the Board allows two continuances before the applicant has to re-file an application. P. Monziona told the applicant to think about how much time he realistically would like; whether he wants to be put on the next agenda or the one after that. Mr. Sample asked to be put on the next agenda. Most of the issues are already in the works; the septic system, the building. There is a building permit for that deck; it was rescinded because there are windows.

P. Monziona instructed the applicant that if he wanted to he could make a request for a continuance. S. Penney stated that they have not accepted the application yet, so it can't be continued. P. Monziona asked if the applicant would have to pay new fees if he withdraws the application; S. Ames said he would have to pay notification and abutter fees, and because he is in the Christian Conference Center, that's extensive. P. Monziona felt that the best thing to do would be to continue the case after it is accepted. The Board would entertain the idea of whether the application is complete; if it is a motion would be made on that. They would vote on whether it could be accepted as complete; if it was accepted as complete, the applicant could seek a continuance.

T. Kinnon recalled that they have continued hearings when people haven't showed up or couldn't make their meeting. He believes they have granted continuances prior to accepting applications. They have had situations where the case has been put on the agenda and then they

have called or something; they have granted continuances. If they grant the continuance tonight, then it goes onto the agenda for next month and the public notification requirements are satisfied. P. Monziona stated that he was alright with that. T. Kinnon went on to say that his other thought was that if they accept this application now, and then the issues get cleared up, then they have to accept it again, when more things would be added to it. P. Monziona said that the applicant would have the right to add to the application; a lot of people show up at hearings and provide additional material. At least he would be in the system with an application.

S. Penney asked if they were in discussion about this right now, because there are outstanding issues. It would behoove Mr. Sample on behalf of his client to interact with the interim Building Inspector and the Assistant Fire Chief, because they did have some articulated concerns of specific issues that probably ought to be cleaned up before the application comes back.

P. Monziona asked Mr. Sample if he had seen the comments by the Code Enforcement Officer and the Assistant Fire Chief, both interim. Mr. Sample said he is not certain why he hasn't, but no. P. Monziona stated that he could have copies of the comments for review; he might want to use the opportunity between this meeting and the next session to address those as well because it is information the Board will have and take into consideration.

T. Morgan stated that he would be more comfortable continuing on the path suggested by T. Kinnon; continue without accepting but not require that there be re-notification of the abutters. Just put it on next month's agenda. P. Monziona agreed. There is a precedent for it and a history of it. It is done by way of a motion

T. Kinnon made a motion that the Board grant a continuance for Case Z10-01 until the next meeting, which is February 4, 2010. T. Morgan seconded the motion, which passed by unanimous vote.

Case Z10-02 Edwin and Jennifer Rosario	Map 34 Lot 33-25	Special Exception 45 Winni Avenue
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Application submitted by Edwin and Jennifer Rosario to request Special Exception from Article 300 Section 320-4 to allow the expansion of a non-conforming structure to include expanding the upstairs living space, enclose existing porch to create a bedroom as well as update electrical and roof. This parcel is located in the Alton Bay Christian Conference Center in the Residential zone.

Materials were distributed for this case.

P. Monziona stated that this seems like a similar situation to the last application: he read the case into the record.

Steve Holmes is representing the applicants this evening, at their request.

P. Monziona disclosed that he and Mr. Holmes serve on a board together at Cornerstone Christian Academy. Now that he is going to be the agent for the applicant, that is a fact he should publicly disclose. Other than both being on the Board of Directors of the Cornerstone

Christian Academy, they have no other relationship. P. Monziona stated that he did not believe it would impact his ability to be fair and impartial to sit on this. There were no objections either from the Board or from the public.

P. Monziona advised Mr. Holmes that if he has not already done so, he might want to review the concerns of the public officials who provide the Board with their comments for Board consideration, specifically the Town Planner, the Code Enforcement Officer, and the fire department with regard to concerns they have about this project. He recommends that Mr. Holmes take a minute and review that, and then see if he wants to do the same thing with regard to this application. He gave Mr. Holmes a few minutes to review those while noting for the record that he does not mean to imply that there are building permit issues or Cease and Desist orders by referencing the previous case. There are some concerns he should consider.

Mr. Holmes stated that in view of waiting for determination from the state concerning septic issues at the campground, it might be in their best interest to postpone this. He would like to request a continuance.

P. Monziona stated that would be fine. He asked Mr. Holmes if he had received department head review request forms from the Water Department and the Conservation Commission. These are all public record and the Board would be happy to provide him with courtesy copies. The Fire Department comments and the Building Inspector/Code Enforcement Officer; there are specific comments from each of those departments that he might also want to take the time to consider. Going on the issue of the septic design plans, that is a criterion they look at on Special Exceptions. There must be adequate water and sewage.

S. Hurst asked Mr. Holmes if he thought he would have enough time to get the issues cleared up between now and the next meeting. Mr. Holmes answered that if it is only the septic issue, they are waiting for a determination from the state. His understanding is that it should be forthcoming. S. Hurst asked the applicant if he read the second page of the Planner's comments; Mr. Holmes asked if he was referring to the part concerning fire issues. P. Monziona said there was a specific comment from the fire department regarding those, copies of which are being provided. Mr. Holmes stated that he does not know the answer to that question at this time.

P. Monziona stated that he had mentioned earlier that two continuances are the protocol; they will provide two continuances solely at the request of the applicant. There are times when additional continuances can be granted without requiring withdrawal of the application. Up there in the Conference Center there are a lot of abutters who would have to receive notification. The Board is sensitive to that. The next meeting is February 4; if Mr. Holmes feels that is adequate time for him to address the concerns then the Board can proceed. Mr. Holmes said he would attempt to address the concerns and look at it again in February.

**S. Hurst made a motion to continue Case Z10-02 to the next meeting on February 4, 2010.
L. LaCourse seconded the motion, which passed by unanimous vote.**

IX. OTHER BUSINESS

APPROVAL OF MINUTES

P. Monziona made a motion to defer review of the November 5, 2009, minutes until the next meeting. S. Hurst seconded the motion, which passed by unanimous vote.

OTHER

Mr. John Dever, the interim Building Inspector addressed the Board. On the last two applications, septic issues were mentioned. He was at the Christian Conference Center today talking to them. He has contacted DES. On the last one, the DES rule is that if you are going to expand up, out, down, or however, you have to have a new review of your septic system to make sure it can accommodate what you are doing. If you stay within everything, you don't have to do that. Quite frequently it's just a review and they will do it at minimal or no cost. It's their rule that it has to be addressed. One of the little bits of information they don't adequately have in hand is how many septic systems are at the ABCCC, what their capacities are, and what is feeding where. He is actively working on that; he will probably go down there tomorrow and go over the plans with the head maintenance man. He spoke to the surveyor; he is re-surveying everything out there partially because of replacing the buildings that were burnt, but also so everyone can have that picture. Within the next two weeks, the surveyor will have a plan, which he will give to Mr. Dever, that shows where all the septics and drywells and whatever is out there. In dealing with DES, they can provide him with information on the capacity of each of those systems. They are actively working on that so it can be on hand when they come to do this, it can be dealt with in advance.

P. Monziona said that would be very helpful because for any applicant who comes with a Special Exception application, one of the criteria is that the Board must make a determination whether there is adequate area for safe and sanitary sewage disposal and water supply. That's going to be a factor the Board is going to look at and any applicant is going to have to address and demonstrate. That kind of information is going to be very helpful. Two applicants took the opportunity to take a continuance with the idea that they are going to be dealing with Mr. Dever's department and whoever else, so that could be brought to their attention as well; when they come back it is hoped that they have all of that for the Board in their presentation. P. Monziona told Mr. Dever that if he can be at the next session when they do that, the Board could receive any input he could provide.

T. Kinnon stated that it would be very helpful to the Board if Mr. Dever and a representative from the fire department could be on hand whenever there are cases from the Christian Conference Center so they could answer any safety concerns. They need to go a lot deeper into these issues with regard to the Christian Conference Center.

Mr. Dever mentioned that one of the things they have been trying to do and hope to have finished by the end of the month is to get a department head workshop of everybody – highway, fire, water, etc., together and find out what everybody knows and put it all together so they are all operating from the same page. He spent about an hour and a half over there today with the

Smiths who are the Executive and Assistant Executive Director. The talked about that also; having an open line of communication with them so that everyone is on the same page going forward from here. That just makes it simpler in the long run.

P. Monziona stated that on all these applications, they look for and welcome input from all of the town departments, the Conservation Commission; all those different entities can provide the Board with as much input as they can get on all the applications.

P. Monziona voiced his appreciation to Mr. Dever and to Assistant Chief Constantino for their time.

T. Morgan asked to have the minutes reflect that there was no representative from the Board of Selectmen present this evening.

X. ADJOURNMENT

T. Kinnon made a motion to adjourn. Motion was seconded by S. Hurst and passed by unanimous vote.

Meeting was adjourned at 8:55 p.m. The next meeting will be February 4, 2010 at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session