

Members Present: Chairman, Richard Quindley; Vice-Chairman, Keith Chamberlain; Marcella Perry; Alternates, Charles Westen; Lyndon Avery, Timothy Kinnon

Others Present: Planner, Kathy Menici; Secretary, Stephanie N, Verdile and others as identified below.

**Call to order** :Chairman R. Quindley called the meeting to order at 7:00 p.m. He introduced the members of the Board, Planner and Secretary.

**Appointment of Alternates:** R. Quindley appointed Alternate, L. Avery for the vacant position left by the resignation of J. O' der

R. Quindley read the purpose of the hearings and stated the rules of procedure.

S. Verdile noted that all applications have been duly posted and all abutters duly noticed per RSA requirements.

**APPLICATIONS FOR PUBLIC HEARINGS:**

**Case#Z05-01**

**Map 26, Lot 6**

**Special Exception**

**James & Joyce Guelli**

**53 Rustic Shores Road**

Application submitted by Thomas Varney, on behalf of James & Joyce Guelli for a Special Exception as cited in the Zoning Ordinance Article 200 Section 220B, Nonconforming Structure (2c) Expansion of a building beyond existing boundaries. The applicant seeks a Special Exception to allow the construction of a concrete foundation under an existing dwelling that is currently supported by pillars. The property is located in the Rural Zone and within the Town of Alton's Shoreland Protection Overlay District.

K. Menici gave her report to the Board and explained the application and the Waiver Requests the applicant is requesting; Section 7.2.11 – Certification by a NH-registered land surveyor and Section 7.2.19 – Location (road or highway coordinates from a USGS map or other suitable location plan)

**Motion made by M. Perry seconded by C. Westen to accept the waiver requests, motion carried with all in favor.**

Tom Varney, Varney Engineering, representing the applicant, J. Guelli, gave his presentation to the Board and explained how the applicant meets the Special Exception criteria. He said the applicant is requesting to raise the house by 2' to install a full foundation and they have made an application for a new septic system that will be located across the street.

M. Perry asked if it would remain a 3-bedroom and T. Varney said yes.

C. Westen asked about future owners building something on the lot where the septic is located and he has concerns about the properties being separated and wants it written in the deed that the properties are tied together forever.

K. Chamberlain asked what type of septic service is there now and the age of the existing septic and what will be the use of the full foundation area.

J. Guelli said it would be for furnace storage and a walk out basement that could be converted to living quarters but no increase in bedrooms.

T. Varney said he showed on the plan the house will be 2' higher.

K. Chamberlain said the pictures show that the cottage is currently sitting on piers and has concerns on how the construction work started without a permit.

J. Guelli said that he started before he got a permit and the Building Inspector said he could start digging before getting a permit. He said he was away for a few weeks and the Inspector was away and he didn't know he needed a new septic.

K. Chamberlain said his concern is not only the violations of the CSPA but the cottage being raised without knowing where the sill height causes problems.

J. Guelli said the cottage now is about 4' above the sill height

K. Chamberlain said that it is just being raised 2'.

J. Guelli said yes the final height would be 2' higher than it is now. He said the private well is seasonal.

K. Chamberlain said that the well is seasonal and the cottage will remain seasonal unless they put a new well in.

D. Quindley asked if they are going to put the new septic in now and J. Guelli said yes and he would like to start when the weather changes.

T. Varney said they would like to pour the footings soon.

C. Westen asked if the preparation devices are in place

T. Varney said yes.

K. Chamberlain asked about the private road being affected when they install the septic system.

J. Guelli said they have permission to work on the road.

The Board spoke about tying the lots together with the deeds and they are in favor of that.

T. Varney finished his presentation to the Board.

R. Quindley opened up the hearing for Public Input for anyone who would speak in favor of the application, there being none he closed that portion.

R. Quindley opened up the hearing for Public Input for anyone who would speak in opposition of the application, there being none he closed that portion.

M. Perry asked if any of the letters from the abutters are against the project.

D. Quindley said no.

The Board decided to have K. Menici read the names of the abutters who wrote letters and noted them for the record that they are in favor of the project.

R. Quindley closed the Public Input portion of the hearing and the Board went into deliberations.

Board Discussion: After reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, The Alton New Hampshire Zoning Board of Adjustment has determined as follows:

Statement:

1. A plat **has been/has not been** accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made.

**Reason- C. Westen said The ZBA confirmed the Planner has accepted the plat and a recommendation has been made, all agreed.**

2. The specific site is/is not an appropriate location for the use.  
Reason- L. Avery said it is already an existing use and it is an improvement to the property all agreed.
3. Factual evidence is found/is not found that the property values in the district will be reduced due to incompatible uses.  
Reason- R. Quindley said the cottage has been raised and the cottage is not blocking a view and replacement of the cottage would be an improvement to the neighborhood, all agreed.
4. There is/is no valid objection from abutters based on demonstrable fact.  
Reason- K. Chamberlain said all abutters are in favor and wrote letters of support, all agreed.
5. There is/is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.  
Reason- M. Perry said it is private road and vehicular traffic would not be increased, all agreed.
6. Adequate and appropriate facilities and utilities will/will not be provided to insure proper operation of the proposed use or structure.  
Reason- C. Westen said the applicant already had a NHDES approved Septic system and the lots will be tied together through the deed, all agreed
7. There is/is not adequate area for safe and sanitary sewage disposal and water supply.  
Reason- L. Avery said they have an approved septic system drawing and there will be no changes to the water supply, all agreed.
8. The proposed use or structure is/is not consistent with the spirit of this ordinance and the intent of the Master Plan.  
Reason- R. Quindley said cottage is already there and it would be an improvement, all agreed.

**Motion made by K. Chamberlain seconded by M. Perry to approve Case #ZO5-01 with the condition that a Lawyer draft a deed to include language that ties the tow lots together and submit to the Town Attorney for review and his approval, motion carried with all in favor.**

R. Quindley announced the next case

**Case# ZO5-02  
Tammy Brown**

**Map 40, Lot 10**

**Special Exception  
27 Peggy's Cove Road**

Application submitted by Thomas Varney, on behalf of the property owner Tammy Brown for a Special Exception as cited in the Zoning Ordinance, Article 200, Section 200B, Nonconforming Structure (2c), Expansion of a building beyond existing boundaries. The applicant seeks a Special Exception to allow the construction of a second floor for an increase in living space. The proposal is to increase the height of the building by eight (8') feet. The property is located in the Lakeshore Residential Zone and within the Town of Alton's Shoreland Protection Overlay District.

K. Menici gave her report to the Board and explained the application and the Waiver Requests the applicant is requesting; Section 7.2.11 – Certification by a NH-registered land surveyor and Section 7.2.9 – Location (road or highway coordinates from a USGS map or other suitable location plan).

K. Chamberlain noted the plan has meets and bounds previously noted and does not feel there has to be a certified plan.

**Motion made by M. Perry to grant the waiver requests, seconded by C. Westen, motion carried with all in favor**

Tom Varney, representing the applicant, Eric Brown, whose wife owns the house, was also in attendance. T. Varney gave his presentation to the Board. He said the applicant wants to add a second floor for additional living space and they want to expand up 8' he referred to the plans submitted. The house is near the beach and there is a lot of open space in front of the house. He said the 25' setback goes through the house as shown on the plans. He said the proposed septic design plan has been submitted to Concord but has not been approved yet.

D. Quindley asked where the septic system is located.

T. Varney said it is in the middle of the lot behind the house.

C. Westen asked about the existing lots around the house and where the driveway comes in. He said the plans show several entrances and shows "driveway" in a few locations and there also appears to be a driveway easement at the top. He asked about the driveway easement.

E. Brown said the easement is his and it was from the previous owner who used to park his car there but no longer does and it is just open land there now. He said there is a driveway to the left of it and it is used now as a turnaround for the cottage.

C. Westen asked for clarification that someone else is using E. Brown's property and E. Brown said yes.

C. Westen asked if it would affect the septic system that someone else will drive and park on the property. T. Varney said no.

K. Chamberlain asked why are they encroaching and creating a more nonconforming use with the overhang of the building and the setback. K. Menici and M. Perry said that would be discussed for the next application.

He asked about the abutters being noticed within 500' because they are within 250' of Lake Winnepesaukee. T. Varney said according to the length of the abutters' list all abutters within 500' have been noticed.

K. Chamberlain spoke about the setback being listed on the plan as being 30' from the shoreline and he asked if it should be 50' from the water.

T. Varney said no because it is an existing lot of record and it was created before 1995.

K. Chamberlain asked if the lot was created after 1995 than he would put the 50' setback on the plans and T. Varney said yes, but there are not too many of those lots around.

L. Avery asked about the elevations of the surrounding homes that are shown on the plans. He said the plans show the cottage as being listed as 112.3' the new house would be at 122' and if that height would block anyone's visibility to the Lake.

E. Brown spoke about the vacant lot currently behind his house and the community well is located to the left of that and south of his house there is a cottage that has a view of the Lake and he said even with his proposal to go up 8' and out 2' it would not affect that cottage. He said there is another cottage down further that has a view of the lake already and would not be

affected by his proposal. He said there are trees that run along his property in the front and if he did not raze his house the neighbors would not be able to see. He there are trees that run along the shoreline also. He said there is another house to the north that has a height of 119' and he would be 3' higher.

It was noted for the record there are no letters for or against the application from any abutter that have been submitted to the Planning Department.

C. Westen asked if the bedrooms would be increased.

E. Brown said no it would remain 2 bedrooms. He said they are only increasing the living area. He said the downstairs is divided up and he wants to take all the walls out downstairs to have a large living space downstairs and move the bedroom and bathrooms upstairs. He said there would be 2 bedrooms and a study upstairs and one to one and a half bathrooms upstairs. He said currently there is less than 700 SF of living space and they have 2 children. He said they would like to have a full bath for themselves and a ¾ bath for the children.

C. Westen added that they would not be increasing the septic system they are applying for. E. Brown said no they are not increasing the septic size.

K. Chamberlain spoke about the increase in living space and the septic system and he has concerns about the expansion and the current septic system.

E. Brown said there are in the approval process to get a new system and the new system could be done before the construction to the house.

K. Chamberlain asked if E. Brown minded that if a condition of approval be that the new septic system be installed in conjunction with the construction of the house. E. Brown said no.

K. Chamberlain also asked about the water supply and if it was seasonal. E. Brown said the water supply is from the community well and it is year round water and he added he lives there year round.

T. Varney finished his presentation to the Board.

R. Quindley opened up the hearing for Public Input for anyone who would speak in favor of the application,

Brian Brouillette- 5 Peggy's Cove Rd is in favor of the expansion because of the need for room for E. Brown's family and he said it would enhance the surrounding properties.

R. Quindley opened up the hearing for Public Input for anyone who would speak in opposition of the application, there being none he closed that portion

R. Quindley closed the Public Input portion of the hearing and the Board went into deliberations.

Board Discussion: After reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, The Alton New Hampshire Zoning Board of Adjustment has determined as follows:

Statement:

1. A plat **has been/has not been** accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made.

**Reason-** K. Chamberlain said The ZBA confirmed the Planner has accepted the plat and a recommendation has been made, all agreed.

2. The specific site is/is not an appropriate location for the use.  
Reason- M. Perry said it is an existing lot and structure therefore it is appropriate for the use, all agreed.
3. Factual evidence is found/is not found that the property values in the district will be reduced due to incompatible uses.  
Reason- R. Quindley said they already heard from an abutter that the values would not be reduced and, all agreed.
4. There is/is no valid objection from abutters based on demonstrable fact.  
Reason- C. Westen said an abutter spoke in favor and no one spoke out against the application, all agreed.
5. There is/is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.  
Reason- L. Avery all uses will remain the same, all agreed.
6. Adequate and appropriate facilities and utilities will/will not be provided to insure proper operation of the proposed use or structure.  
Reason- K. Chamberlain said there is a Community Water supply and NHDES approved septic system will be installed in conjunction with the construction, all agreed.
7. There is/is not adequate area for safe and sanitary sewage disposal and water supply.  
Reason- M. Perry said the approval is subject to the NHDES approval and the community well would not be affected, all agreed.
8. The proposed use or structure is/is not consistent with the spirit of this ordinance and the intent of the Master Plan.  
Reason- R. Quindley said the proposed structure is consistent with the spirit of the ordinance and the intent of the Master Plan, all agreed.

**Motion made by K. Chamberlain seconded by C. Westen to approve Case#ZO5-02, with the condition that the applicant install the approved NHDES septic system in conjunction with construction plans, motion carried with all in favor.**

R. Quindley read the purpose of the next case

**Case#ZO5-03**

**Map 40, Lot 10**

**Variance**

**Tammy Brown**

**27 Peggy's Cove Rd**

Application submitted by Thomas Varney, on behalf of the property owner Tammy Brown for a Variance as cited in the Zoning Ordinance Article 200, Section 227A(2) Setback Requirements. The applicant seeks to expand the existing building an additional two (2') feet within the twenty-five (25') front setback from the street. The property is located in the Lakeshore Residential Zone and within the Town of Alton's Shoreland Protection Overlay District.

K. Menici gave her report to the Board and explained the Waiver Requests as follows: Section 7.2.11: Certification Section and 7.2.9: Survey Accuracy

**Motion made by K. Chamberlain seconded by L. Avery, to grant the waiver requests, motion carried with all in favor.**

T. Varney and Eric Brown representing the application gave the presentation to the Board. He said the variance request is to expand the upper story 2 feet outward and it would be further into the setback. The first floor would remain the same dimensions.

C. Westen asked if the existing walls support the 2' expansion outward on the existing structure. T. Varney said he believed they would but he is not a builder.

E. Brown said he is going to gut the inside of the first floor and if he needs to he would move the studs (2'x6') closer together if they need the support.

C. Westen asked if there were going to scab the existing walls and E. Brown said yes.

K. Chamberlain spoke about the foundation being a block foundation currently and that with the overhang he asked if the Building Inspector required the plans to be stamped by a structural engineer stamp the plans to make sure the proposed overhang would be safe. He said he does not see how they cannot meet the hardship criteria (Article 200, Section 227). He can see the plan makes sense to use the existing foundation but he suggested moving the house closer into the lot so they are not creating something more non-conforming.

E. Brown said financially it would be too difficult to move the house. He said this plan is of minimal cost with minimal change. He said to the right of the house the road passes through there and there is the parking area located there. He said there would be at least 16' from the ground to the overhang. He said the ground from his house to the road is also sloped away from the road. He said he is trying to increase the living space of his family. He said it was originally on the beach and it was moved to the current location in the 1960's and his wife bought it in August in 2004.

M. Perry agrees with K. Chamberlain on the encroachment issue. She spoke about the intent of the Master Plan of maintaining the open space and she has concerns about increasing the non-conformity and the hardship criteria have not been met. She said that she is sure when they purchased the property they were aware of the size of the lot and the house. M. Perry said it is still an encroachment into the setback and that is not the intent of the Master Plan or the spirit of the ordinance.

E. Brown said the extra 2' would not block anyone's view.

K. Chamberlain spoke about the house being 2' closer to Peggy's Cove Rd (Private Rd) and if the road goes through the applicant's lot. He has concerns about traffic being able to access the rest of the road.

E. Brown said there is an area to the south that the trucks use for turn around and there is 20' before the overhang of the house reaches the road.

K. Chamberlain asked why they are doing the 2' overhang with increase of 200' SF.

E. Brown said yes with a wife and 2 kids to try to fit bathrooms and furniture it is hard to fit everything.

K. Chamberlain said they could increase the living space without becoming more non-conforming. He reminded the applicant that he has to prove hardship to the Board.

The Board discussed that there is an opportunity to add on to the structure without becoming more non-conforming.

E. Brown asked if the Board was talking about adding on to the back of the house.

K. Chamberlain said yes away from the Peggy's Cove Rd side and not in any of the setbacks.

T. Varney said he put the septic system close to the house because of the location of the community well protective radius. That is why they cannot build on the backside of the house. He said they got a waiver from the Board of Selectman last week.

C. Westen said the hardship is that the only location for the septic system being so close to the house because of the setback from the well radius of the Community well.

K. Chamberlain asked if the septic system could be moved any further.

T. Varney said the neighbor has a retaining wall and they cannot get closer to it and because of the effluent leaching toward the wall because the Brown property is higher than the neighbor.

M. Perry asked if there are living quarters in the garage area and E. Brown said no and there is no garage there either.

C. Westen asked about the chimney.

E. Brown said they are having a mason look at the structure.

T. Varney said the soils are clay and sand.

Discussion about the square footage of the upstairs being 672' currently and the addition would be 1550 SF house and the layout of the lot is too steep and the Community well setback is too large to move the house.

R. Quindley opened up the hearing for Public Input for anyone who would speak in favor of the application, there being none he closed that portion of the hearing.

R. Quindley opened up the hearing for Public Input for anyone who would speak in opposition of the application, there being none he closed that portion of the hearing.

R. Quindley closed the Public Input portion of the hearing and the Board went into deliberations.

The Board went into deliberations to discuss the application as follows:

Public Interest- The variance will / will not be contrary to the public interest

**Reason-** K. Chamberlain said the applicant has notified abutters within 500' and no one has responded negatively so the variance request will not be contrary to the public interest. The Board was not unanimous in agreement. M. Perry disagreed and R. Quindley, K. Chamberlain, L. Avery, and C. Westen agreed (4-1).

Hardship- Boccia- Area Variance Request Criteria

(1) An area variance is **not** needed to enable the applicant's proposed use of the property given the special conditions of the property.

**Reason-** M. Perry said the owner was aware of the conditions when he bought the house and the addition can be made without the additional 2' expansion. K. Chamberlain agrees with M. Perry L. Avery, disagrees, R. Quindley disagrees because of the location of the protective radius of the well, C. Westen disagrees (3-2)

(2) The benefit sought by the applicant can /cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance



Reason- M. Perry & K. Chamberlain agree the house can be expanded without further encroachment into the setback. D. Quindley, L. Avery and C. Westen disagree (3-2)

(3) Based on the above analysis, special conditions **do** / **do not** exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

Reason- R. Quindley read the statement into the record.

Spirit of the Ordinance- The request **is** / **is not** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed.

Reason- R. Quindley said the proposed is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and will not inconvenience the health, safety, and character of the district. L. Avery, C. Westen, K. Chamberlain agree. M. Perry disagrees only because it is not in conjunction with the intent of the Master Plan (4-1).

Substantial Justice- by granting the variance, substantial justice **will** / **will not** be done.

Reason- C. Westen said it will be justice be done because the septic and well radius issue the location is the only one for the expansion. R. Quindley, L. Avery. K. Chamberlain agree. M. Perry disagrees (4-1).

Value of Surrounding Properties- The request **will** / **will not** diminish the value of the surrounding properties

Reason- L. Avery said it will increase the values of the surrounding properties, all agreed

**Motion made K. Chamberlain by to approve Case# ZO5-03 as all the variance criteria being met, seconded L Avery by, motion carried with a vote of 4 in favor and 1 opposed (M. Perry).**

**Case ZO5-04**

**Map 36, Lot 29**

**Special Exception**

**Henry & Jacqueline Brandt**

**175 Mount Major Highway (Rte 11)**

Application submitted by the property owners Henry and Jacqueline Brandt for a Special Exception as cited in the Zoning Ordinance Article 300, Section 344B, Structure Setbacks. The applicant seeks to construct a garage within the required twenty-five (25') front setback. The property is located in the Residential Commercial Zone.

K. Menici read into the record the purpose of the application and discussed the following waiver requests the applicant is seeking: Section 7.2.5, Name and Addresses; Section 7.2.9, Survey Accuracy; Section 7.2.11, Certification; Section 7.2.13, Signature Block; Section 7.2.17, Utility Poles; Section 7.2.33, Wetlands; Section 7.2.34, Zoning District Boundaries

K. Chamberlain asked K. Menici what the waiver request for Name and Addresses means. K. Menici said the address of the owner is incorrect.

K. Chamberlain asked about the stamp of the surveyor and K. Menici said the plans have been copied and altered. K. Chamberlain said but at one point there was a surveyor stamp on the plan verifying accuracy.

M. Perry said the plans have been altered by the applicant therefore the plans are not accurate. K. Chamberlain agreed.

K. Menici said the Special Exception criteria are similar to site plan review process. And the ZBA acts like the Planning Board in its review and the plans have to be accurate.

L. Avery said it looks like it is a plan from his previous work that he has been doing over there.

C. Westen is uncomfortable going forward with the application because the plan has been altered and it does not have the proper signature.

K. Chamberlain said there have been worse plans submitted that the Board has acted upon.

K. Menici said it depends on the type of application and the criteria for materials for a Special Exception are higher than a variance. But the Board has to decide on a case by case basis if this plan is accurate.

M. Perry spoke about the letter from the NHDOT recommending an accurate plan be submitted before any action is taken.

D. Quindley agrees with M. Perry to give consideration to the NHDOT letter. He asked if they should open it up to the public.

M. Perry said no the Board couldn't open it up to the public; because in order to open up the hearing for the public they have to accept the waivers.

L. Avery said they need a more accurate plan.

C. Westen also spoke about the NHDOT'S concerns and they should have a more accurate plan in order to go forward.

R. Quindley read the NHDOT letter dated February 1, 2005 (in file), from Randy Talon about the proposed construction and he requesting a certified plan and a driveway permit be submitted to the NHDOT.

K. Chamberlain spoke about the applicant infringing upon the NHDOT ROW and he said the applicant submitted a plan showing the NH ROW and ample space.

K. Menici said no the plan in fact does not show the distance state ROW and she said it shows the paved area of Rte 11. She said measured the distance and it is very close. She said given how close the applicant proposed to build the garage, in its entirety, into the setback and the proximity to the NHDOT ROW a surveyed plan is warranted. She said the NHDOT ROW is not shown on the plan.

The Board discussed that the garage potentially could be built within the state ROW if they do not have an accurate plan.

K. Chamberlain spoke about the disclaimer on the application that says the applicant is responsible for mistakes.

M. Perry wants the plan to be corrected before they go any further and L. Avery agrees.

**L. Avery made a motion to get a more detailed plan and not accept the waivers as requested, seconded by M. Perry.**

**Discussion on the motion:** K. Chamberlain asked L. Avery to clarify the waivers requested that are not going to be granted.

L. Avery said the waivers not being granted are: Section 7.2.9, Survey Accuracy; Section 7.2.11, Certification; Section 7.2.13, Signature Block; Section 7.2.17, Utility Poles; Section 7.2.33, Wetlands; Section 7.2.34, Zoning District Boundaries.

K. Menici said she itemized the waiver requests for what is applicable to the application.  
K. Chamberlain spoke about the location of the buildings being completed and that could be existing and future improvements. K. Menici said the description of existing and future improvements does not include the structures.

K. Chamberlain said if the waivers are not accepted than the location of the four corners of the building need to be identified.

L. Avery also wants to know where the building will be when it is finished in relation to the setback and ROW lines. He said that also needs to be on the plan he questioned whether a surveyor would stamp a plan on where a proposed building will be.

K. Menici said surveyor could locate the proposed building.

L. Avery wants to be clear that the new plan needs to show the current and proposed building locations and be certified and the relation to all the property lines and the ROW line.

First motion failed, second motion is as follows:

**L. Avery made a motion, seconded by C Westen to not accept the waiver requests, therefore not accepting the application. The following requirements shall be identified on a new plan:**

- 1. Section 7.2.5, Name and Addresses;**
- 2. Section 7.2.9, Survey Accuracy; including location of house and all structures relative to ROW lines, driveways existing or proposed.**
- 3. Section 7.2.11, Certification stamp**
- 4. Section 7.2.13, Signature Block, corrected**
- 5. Section 7.2.17, Location of Utility Poles**
- 6. Section 7.2.33, Wetlands, if any.**
- 7. Section 7.2.34, Zoning District Boundaries**

**D. Quindley asked about the responsibility of forwarding a copy of the plan and a driveway permit to the NHDOT.**

**K. Menici said it is the applicant's responsibility.**

**The motion carried with all in favor.**

H. Brandt spoke to the Board gave his presentation to the Board.  
He said the name and addresses on the plan is where they used to live and they have since moved, however the name on the application is correct and the Town records have not been updated yet.

K. Menici said they have to update the records in writing to the Tax Collector's Office.

M. Perry said it is easy to update when you submit the new plan.

H. Brandt said his surveyor is out of the country and cannot work on his plan. He said he would have to hire a new surveyor and start over. He said he has a letter from him attesting to the survey accuracy and attesting to the plan.

L. Avery reminded H. Brandt that the certification is to what the surveyor drew the first time and does not include the changes that H. Brandt has made.

K. Chamberlain summed it up for H. Brandt by saying they have made their decision and they did not accept his request for the waivers. He reminded the applicant that normally the Board

would not even allow the applicant to speak and the Chairman is allowing it. He said the Board has made their motion and their decision and H. Brandt will have to hire a surveyor to fulfill what the Board is looking for. He reminded the applicant that he can submit a plan not infringing the setback and he would not even need this plan and would not even need a Special Exception. D. Quindley agrees with K. Chamberlain and he reminded the applicant he did allow him to speak and he told him the biggest problem with the case is how close will the garage be to the ROW and D. Quindley agrees with the NHDOT's concerns.

H. Brandt interrupted D. Quindley and continued making his presentation to the Board. M. Perry said the Board has already voted.

D. Quindley the Board has already voted and he told H. Brandt the plan has to be updated according to the Board's request.

K. Chamberlain said it is a NH Licensed Surveyor that has to stamp the plans to ensure the accuracy before the Board can hear the case.

**Case #Z04-24**

**Map 12, Lot 14-2**

**Variance**

**Gerard & Susan Maus**

**Route 28**

Application submitted by Arthur Hoover, on behalf of Gerard & Susan Maus for a Variance from Article 500, Definitions, Frontage on a Street, from the Alton Zoning Ordinance. The ordinance requires that access be gained to a lot from the street frontage upon which the lot is located.

Applicant proposes to gain access to Map 12, Lot 14-2 through a proposed 50' easement off of Bay Hill Road. The property is located in the Rural and Rural Residential Zones. The application was continued from the December 2, 2004 meeting. January meeting was cancelled because of bad weather.

L. Avery spoke about the reason for him recusing himself the last time the application, he was in negotiations with A. Hoover at the time the case was presented and the board asked if he could be objective, L. Avery said yes he could

M. Perry recused herself because she was on the Planning Board at the time of the original subdivision approval.

D. Quindley appointed T. Kinnon to sit on the application for M. Perry

K. Menici read in the record the purpose for the application into the record and said there are no waiver requests submitted with the application.

Arthur Hoover, representing the application was in attendance as well as the property owners Gerard & Susan Maus.

D. Quindley asked if the application is complete and that all the information that was required was submitted.

K. Menici said the application is complete but it was not submitted within the Town's Format.

A. Hoover said now they are aware now of the application requirements and the application will be going to Planning Board.

D. Quindley also noted the minutes reflected that the application was not complete and has it been completed now.

K. Menici said no the information was provided but it was not within the Town's format and it was time consuming for S. Verdile to set up the files and it was time consuming for her to research the file for abutter notices and posting purposes.

D. Quindley said it was decided by the Town Attorney that it was a use variance not area variance.

K. Menici said she spoke to Attorney Sessler and his opinion stands that it is a use variance.

K. Chamberlain said he was acting as Chair the first time the application was presented. He said he spoke with Attorney Sessler about whether the Board should hear the case because it was not filled out in the Town's format and Sessler's decision was to not hear the case and that the Planning Department and the ZBA will not accept applications that are not filled out to the Town's format. He spoke about Mr. Hoover choosing not to be heard because there was not a full board.

Mr. Hoover appreciates the Planning Department's concern of the application being in the wrong format and he will use the Town's format. He continued by saying it is dimensional variance and he will go forward if it is decided to be a use variance.

K. Menici spoke about the cover sheet for the application has to be filled out.

K. Chamberlain wants the Board to decide how to hear the case.

Discussion about the type of variance that was submitted to be heard and the board discussed the Town Attorney and K. Menici's recommendation to hear the case as a use variance.

A. Hoover does not agree with Attorney Sessler's opinion and wants it to be part of the record that he believes it is a dimensional variance but he will present the case as a use variance.

K. Menici said it should be heard as a use variance because if it is not it would look like the Planning Board approved a nonconforming lot.

R. Quindley said the Board would hear the case as a Use Variance

A. Hoover gave his presentation to the Board and the history of the property. He said there was an existing driveway permit for access had expired and it was renewed and it was for access off of Route 28. He said the deed language indicate there is an existing right of way through Lot 1 & 2 and the owners of those lots do not agree the Right of Way grants them access through their property, then they would have to have three driveways and that is frowned upon as the Planning Board and there would be care and maintenance issues with the shared driveway and the Planning Board frowns upon that. The driveway access off of Route 28 is approved but the access is dangerous.

K. Chamberlain asked about the survey plan and if the driveway cut would have been shown when the property was subdivided.

A. Hoover submitted a survey plan from the subdivision to the Board.

He said he spoke with the NHDOT and their opinion is that the driveway access from Route 28 would involve a lot of construction and disturbance to the site. There is a letter from the NHDOT supporting any other access as part of the file.

A. Hoover said there is an agreement from the abutting property owners (Todd/Dolliver) to allow them to access the property along the property line. He said the Maus' want to use the property to build a garage and they will go to the Planning Board for site plan approval. He said the access from Bay Hill Rd through the agreed easement/deeded right away that will be 1,063 feet and it will be a fire lane and the Maus' will be required to comply with all the Planning Board's requirements as well as the Fire Chief and the Road agent's standards. There will be an agreement will be only for the one lot and no further lots will be subdivided and it will only be used for the one lot. He said there will be no additional lots and there will be no shared driveways.

Discussion about the deed language stating that the right-of-way access will be granted to run with the land. Discussion about the other property owners not agreeing with the deed language that indicates access and the fact the lots were approved with the 3<sup>rd</sup> lot having access off of Route 28.

The Board wanted to know what will prevent the Maus' will build a house on the lot. A. Hoover said they are not looking for any other use for the property except for the garage for storage. Discussion about the 50' easement will not have an impact on the Todd's and Dolliver's future use of their land.

A. Hoover said the deed will spell out the specifics and it is had been agreed with the current property owners that the only reason this land is being used as proposed; is to relieve the Maus' from having to build in from Route 28. The deed will be worded to say what can be allowed and cannot be allowed and it will run with the land in perpetuity.

A. Hoover said the use for the property would be very limited.

K. Chamberlain spoke about the distance of the driveways.

A. Hoover said they will be about 100' apart and the standards for the road will be built according to the Town of Alton Fire and Safety access standards and that will be addressed in the Planning Board. He spoke about the flared entrance in order to accommodate the emergency vehicles.

R. Quindley opened up the hearing for anyone to speak in favor of the application, there being none he closed that portion of the hearing.

R. Quindley opened up the application for anyone to speak against the application, there being none he closed that portion of the hearing.

The Board went into deliberations to discuss the case.

*Public Interest- The Variance will/will not be contrary to the public interest*

**Reason-** C. Westen said it will not be contrary to the public interest, all agreed

*Harship-Simplex-Use-*

*(1) The zoning restriction as applied does/does not interfere with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.*

**Reason-** L. Avery said the driveway off of Route 28 would be dangerous and costly to the property owner and the abutter have granted the land to the applicant, other abutters have no objection, all agreed.

*(2) There is/is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property*

**Reason-**L. Avery said there is not a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restrictions on the property, all agreed.

*(3) The variance will/will not injure the public or private rights of others*

**Reason-**L. Avery said because the access has been granted and no one is opposed to the application, all agreed.

Based on the above analysis, special conditions do/do not exist such that the literal enforcement

of the zoning ordinance results in unnecessary hardship

R. Quindley read the statement into the record.

*Spirit of the Ordinance- The request is/is not in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed.*

**Reason-R.** Quindley said the driveway access will be safer off of Bay Hill Rd instead of Route 28 and the character of the district will not be affected, all agreed.

*Substantial Justice- By granting the variance substantial justice will/will not be done.*

**Reason-T.** Kinnon said the owners will have safer access to their property and the abutters have all agreed to the proposal, all agreed.

*Value of surrounding properties-The request will/will not diminish the value of the surrounding properties.*

**Reason-K.** Chamberlain said the allowing access to the property will not diminish the value of the surrounding properties, all agreed.

**Motion made by K. Chamberlain, seconded by C. Westen to approve Case#ZO4-24 as all the criteria of the Variance requirements have been met. R. Quindley mentioned the Highway Agent having concerns and K. Menici said those would be addressed at the Planning Board level. R. Quindley called for the vote, motion carried with all in favor.**

**OTHER BUSINESS:**

1. Approval of Minutes of the December 2, 2004 Meeting.

**Motion made by M. Perry, seconded by K. Chamberlain to approve the minutes of December 2, 2004 meeting as presented, motion carried with all in favor.**

The Board discussed the criteria of the Variance requirements not being met as it relates to the Master Plan. K. Menici said she would work on setting up another work session for the Board.

2. Old Business
3. New Business
4. Correspondence

**Motion made by L. Avery seconded by C. Westen to adjourn at 10:00pm, motion carried with all in favor.**

Respectfully submitted,

Stephanie N. Verdile  
Alton Zoning Board of Adjustment Secretary