

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

Members absent: Chairman; Richard Quindley, Stephen Paul

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

Call to order: Vice-Chairman K. Chamberlain called the meeting to order at 7:12 p.m. He introduced the members of the Board, Planner and Secretary.

Appointment of Alternates: Vice-Chairman K. Chamberlain appointed Alternate, L. Avery for the vacant position left by R. Quindley and T. Kinnon to replace the seat from the resignation of J. O'der.

Approval of Agenda:

K. Menici discussed the changes to the order of the agenda and suggested that the Gayner cases be heard in order and move Case#ZO5-07 to the first application.

Motion made by M. Perry, seconded by C. Westen to approve the agenda as recommended by K. Menici, motion carried with all in favor.

K. Chamberlain read the purpose of the hearings and stated the rules of procedure.

K. Menici announced the first case as follows

APPLICATIONS FOR PUBLIC HEARINGS:

Case #ZO5-07

Map 49, Lot 29A

**Special Exception
6 Boat Cove Rd**

Brian & Jocelyn Caple

Application submitted by the property owners to request a Special Exception from Article 200, Section 220A4, Non-Conforming Uses, in order to add a waterfront deck underneath an existing deck. The proposed deck would be located within 5 feet from the shoreline of Lake Winnepesaukee. The property is located in the Lakeshore Residential District, The Town of Alton's Shoreland Protection District and the State of New Hampshire's Shoreland Protection District.

J. Caple, property owner, spoke about the reason for the Special Exception request so they can utilize the basement as a walk out and have access to the deck and safe access to the dock. The closest the deck would be to the water is 6.9 feet from the high water mark. She said the existing and proposed decks would be located within the lakeshore setback. The town's Zoning Ordinance requires a 30' setback from the shore of the lake. Because of the way in which the dwelling is sited on the lot, the proposed deck will be located from 6.3' to 20.9' from the shore.

C. Westen asked about the condition of the existing deck.

B. Caple said the existing deck was repaired 6-7 years ago.

K. Chamberlain asked why the need for the deck.

J. Caple said they want to convert windows to sliders doors and it would be a drop off and they would like to have a deck under the existing deck for safe access.

Discussion about the need for the deck in order to gain safe access from the house to outside because of the 3 foot drop. The deck would tie into the existing retaining wall for support and the deck would be made of wood and the railings would be to code. There was discussion about existing stairs that would tie into the deck and if they could put stairs on the deck that would lead to the sidewalk and eliminate the existing stairs.

The Board verified that the deck would not be changed into living space or that it will not be closed in or screened in, it would just be a deck.

K. Chamberlain opened up the hearing for anyone to speak in favor of the application. Elaine Lampert, abutter submitted a letter in favor of the application and she also appeared to speak in favor of the application. K. Chamberlain read the letter into the record.

K. Chamberlain opened up the public hearing for those opposed to the application, there being none he closed that portion of the hearing.

K. Chamberlain closed the Public Input portion of the hearing and the Board went into deliberations.

T. Kinnon reminded the Board of the advice from the Town Attorney to have the Chairman read all the criteria and the board members will answer individually.

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:

K. Chamberlain read all the criteria into the record as follows:

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- T. Kinnon, C. Westen, L. Avery and M. Perry 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- T. Kinnon said it is appropriate because the house is existing, L. Avery, C. Westen, K. Chamberlain, and M. Perry 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- T. Kinnon said it will increase values, L. Avery said the abutters agree, C. Westen the runoff will be treated better and the abutter spoke in favor, K. Chamberlain said it will increase the value, M. Perry said the letter from the abutter was in favor, all agreed.

4. There **is/is no** valid objection from abutters based on demonstrable fact.

Reason- T. Kinnon said an abutter spoke in favor, L. Avery, C. Westen, K. Chamberlain and M. Perry 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 T. Kinnon said it will be safer, L. Avery agreed, C. Westen agreed, K. Chamberlain agreed and M. Perry agreed.

6. Adequate and appropriate facilities and utilities will/will not be provided to insure proper operation of the proposed use or structure.

Reason- T. Kinnon said all the structures are existing, L. Avery said the Code officer will be inspecting to ensure compliance, C. Westen agreed, K. Chamberlain agreed, M. Perry agreed.

7. There is/is not adequate area for safe and sanitary sewage disposal and water supply.

Reason- T. Kinnon said there is an existing structure and services are adequate, L. Avery, C. Westen, K. Chamberlain and M. Perry 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- T. Kinnon said it is not going outside the existing footprint and not detract from the aesthetics of the structure or the spirit and intent of the zoning ordinance or Master Plan L. Avery agreed, C. Westen said it will not increase the existing non-conformity, K. Chamberlain agreed, M. Perry said it is within the spirit of the ordinance and Master Plan.

K. Menici suggested a condition of approval be that the applicant receive all state and local permits and provide copies to the Planning Department prior to the issuance of a building permit.

Motion made by M. Perry, seconded by T. Kinnon to approve Case #ZO5-07 with the all the criteria of the Special Exception being met as well as the condition that all state and local permits be approved and copies provided to the Planning Department prior to the issuance of a building permit, motion carried with all in favor.

K. Menici announced the next case

Case #Z04-23

Map 53, Lot 3

Administrative Appeal

Robert Gayner Trustee

62 Temple Drive

Application submitted by Walker & Varney P.C. on behalf of Robert Gayner Trustee for an Administrative Appeal from a Cease & Desist Order issued by the Town of Alton Building and Code Officer on September 28, 2004. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District. This application was continued from the December 2, 2004 meeting.

K. Chamberlain began to speak to the applicants before discussion on the hearings and Robert Varney interrupted K. Chamberlain and said he already spoke to the Town Attorney J. Sessler about the idea of handling all the cases presented at once and have the ZBA take the information under advisement. The Board wants to continue the cases with the agreement of the applicant until April 7, 2005.

K. Chamberlain verified that the applicant will present all three applications at one time to the Board and the Board will take everything under advisement at this hearing and the cases will be continued to April 7, 2005

K. Menici read into the record the two remaining cases into the record as follows:

**Case #Z05-05 Map 53, Lot 3 Equitable Waiver of Dimensional Requirements
Robert Gayner Trustee 62 Temple Drive**

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for an Equitable Waiver from Dimensional Requirements in order to maintain the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

**Case #Z05-06 Map 53, Lot 3 Variance
Robert Gayner Trustee 62 Temple Drive**

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for a Variance from Dimensional Requirements in order allow the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

Robert Varney, applicant's attorney of Walker & Varney Law Offices, Wolfeboro NH and Robert Gayner, property owner, were present on behalf of the application.

R. Varney handed out plans completed by Tom Varney, Varney Engineering, of the premises that were identified as As-Builts of the property as well as a written summary of the applications. The Board was utilizing the plans labeled as "As-Builts" for the hearing.

R. Varney said R. Gayner obtained permission from the NHDES to dredge an area for a boat slips. R. Varney spoke about the historic area of the railroad structure and said the NHDES had concerns about the historic resource being damaged. R. Gayner was given the idea he could replicate the historic train area and Inn. Drawings were submitted to the NH Dept of Natural Resources and they approved it on March 8, 2004 and they recommended to the NHDES that they approve the replica structure. The NHDES reviewed it and on April 2, 2004 they wrote R. Gayner a letter and what he had proposed would not require any new permits from the NHDES and did not require him to go back to the Governor and Council for approval. The NHDES informed R. Gayner that he would have to comply with the Town of Alton's regulations. R. Varney said that in April and May of 2004 R. Gayner made a number of efforts to attempt B. Boyers and was finally able to reach b. Boyers by phone. R. Varney spoke about the deposition that was taken on February 3, 2005 regarding the conversations between B. Boyers and R. Gayner. R. Varney said that during that conversation R. Gayner asserts that B. Boyers said everything looked fine and ok on the structure that R. Gayner proposed and provided it was 30' back from the shoreline and no more than 35' high. K. Chamberlain said he did not have a complete copy of the deposition and wanted to know if R. Varney would be referring to the complete deposition.

T. Kinnon requested a full copy of the deposition also.

R. Varney said one was provided at the time of the application submission.

Discussion about why the ZBA did not have the deposition in their packets. R. Varney said he submitted it at the time he submitted the application. K. Menici said she could have missed it.

R. Varney continued by saying work began on the structure in late June/July 2004.

He continued by referring to the August 6, 2004 inspection performed by B. Boyers and a representative from the NHDES. He said the structure at that time had been fully framed and fully sheathed. R. Varney spoke about the photographs that were taken and that J. Sessler has. K. Chamberlain wants copies of everything that R. Varney refers to be provided in the file.

R. Varney said his client did not receive any notification from the NHDES or the Town of Alton until he received Administrative Cease & Desist notification from the NHDES on September 26, 2004 and the Town of Alton to Cease and Desist on September 23, 2004.

R. Varney said they filed the Administrative Appeal against B. Boyers' Cease & Desist Order and that the B. Boyers misinterpreted the Zoning Ordinance. He then explained after further review of the application he believed that a request for a Variance and an Equitable Waiver were warranted. He said each application has different criteria and he would like to take them one at a time and begin with the Administrative Appeal application, then the Variance and then the Equitable Waiver.

K. Chamberlain wants it clear for the Board and instructed them to only focus on the Administrative Appeal information when that case is being presented and the same for the Variance and Equitable Waiver application.

R. Varney referred to page 4 of the memo he submitted to the Board that refers to Section 228a of the Zoning Ordinance for the reasoning of the Administrative Appeal request. He spoke about the height restriction where it states the maximum 15' above full lake level for boathouses. He said there is one very important thing to consider and that is where to start measuring from. He said every other part of the Town of Alton ordinance that says where you measure height is from the mean grade of the surrounding ground, not from the full lake level. He questioned why the Lake is chosen for the measuring point. His opinion as to why the lake is chosen is because when the citizens of Alton adopted the ordinance what they meant by a boathouse or canopied boat slip was something that sticks out over the waters of the lake. He said it makes sense to limit the height of such structures. He said the primary reason for that would be that they did not want to let one waterfront owner aggregating for their use; that portion of the public waters of the state that would interfere with the views and adjacent uses of other waterfront owners. Another reason was for the public to be looking at these taller structures located over the water. He said they were concerned with the private rights of abutters and the public rights of the citizens of Alton. He said this structure (R. Gayner's) sits 30' back from the shoreline and if it weren't for the dredged in boat slips he said he and his client would not be here. He said the structure would be permitted in every zone and there is nothing about the structure does not conform precisely to the ordinance requirements. The lot is created before 1995, the structure sits more than 30' from the shoreline, and it is no more than 35' high. He asked was Section 228a meant to apply to structure that exists on R. Gayner's property. R. Varney said that section was not meant to apply to the structure. He said Mr. Boyers is mistaken in applying 228a to R. Gayner's structure. R. Varney wants section 228b height to be utilized and applied for the height for the R. Gayner boathouse. He is asking the ZBA to look at the intent of Section 228a of height for structures, and he said the physical location of the structure, which he said he believes is not in dispute, the dimensions of the structure, which are not in dispute. He is asking the ZBA to grant the request for the Administrative Appeal to reverse Mr. Boyers' Cease & Desist Order and give them relief from the Cease & Desist Order.

R. Varney finished his presentation on the Administrative Appeal.

K. Chamberlain said the Board would like to ask questions.

C. Westen asked during the dredge permit did R. Gayner alter the shoreline yes or no.

R. Varney said yes they altered the shoreline as far as meaning that the waters of Lake Winnepesaukee flowed into the dredged area. He said if that constitutes an alteration of the shoreline than it should be a decision for the ZBA to answer and that answer should only be determined if the ZBA verifies that is what the ordinance means.

C. Westen asked R. Varney if he does consider the fact that the boathouse is above the lake.

R. Varney said no I do not. C. Westen asked if there is water under the boathouse.

R. Varney said there certainly is. C. Westen asked if it is water from the Lake.

R. Varney said yes the water is from the Lake. C. Westen said than the boathouse is above the Lake. R. Varney said he disagrees because the law of the State of NH is that the underlying real estate of a great pond belongs to the public and he does not believe a dredged boat slip creates public ownership.

T. Kinnon asked if there was any precedent to that.

R. Varney said that it has been ever since asserted by the State to ownership rights to the underlying real estate.

K. Menici said the town's interpretation is that if there is any alteration to shoreline, than the setback is measured from the newly created shoreline (the dredged area). She said personnel from the NHDES including; D. Forst of the Wetlands Bureau, G. Springs who is responsible for the enforcement of the CSPA, and Alan Brook, Attorney in the Attorney General's office who provides the legal services to the Wetlands Bureau. She said all of them interpret the shoreline as to be newly created shoreline as the reference line to measure a setback for structures.

K. Chamberlain spoke about the permit that was issued to the applicant for a 38'x 38' dug in boathouse. He asked if the personnel from the NHDES that K. Menici spoke about are saying that once you dig 38' into the embankment that now the new shoreline is within the dug in area.

K. Menici said yes that is correct and the NHDES were very specific in their answer.

K. Chamberlain asked if there is anything in writing that they can provide.

K. Menici will provide the Board with the RSA explaining the setback.

K. Chamberlain asked when a permit is started, is there a plan that shows where the existing shoreline is. He asked if there was reference lines that NHDES was aware of and in their permitting process had shown to the applicant that this is the reference line that you will start the 38'x 38' from.

R. Varney said there is a plan on file with the NHDES.

K. Chamberlain asked if the Town has it and R. Varney said it was submitted as part of the application.

K. Menici provided a copy of the original NHDES Wetlands permit. There was discussion about where the existing shoreline was before the start of the construction. It was discussed there is not a plan showing that information, just what was submitted in the wetlands permit and that is a Lakeshore Construction plan that was approved by the NHDES. There was discussion about the wetlands permit on sheet 2 of existing conditions showing the dimensions but no surveyed information was submitted to the NHDES.

R. Gayner spoke about sheet 2 of 4 of existing conditions in the application prepared by Lakeshore Construction.

K. Chamberlain said it shows the applicant requested to go 10' further into applicant's property and he asked if that was ever done and R. Varney said yes.

K. Chamberlain noted there have been changes to the permit and asked if an amended permit was submitted to the NHDES.

R. Varney said there has never been any question of the execution of the permit below 519. feet.

K. Chamberlain said that is not what he is asking.

R. Varney said he stands corrected and the permit was not changed.

K. Chamberlain then referred back to the permit sheet 2 of 4, proposed conditions, the note dated "4/5/02 to revise and locate the boathouse 10' further into applicant's property.." was never done.

R. Varney said it was not done. K. Chamberlain verified that that the permit is for a 38'x38' footprint for a boathouse that was approved. R. Varney said that is correct. K. Chamberlain asked if on the plan "sheet 2 of 4 of proposed conditions" could the applicants show the existing shoreline. R. Varney said it is shown in a bold broken line. K. Chamberlain spoke about that line being the one that the NHDES refers to when approving the permits.

T. Kinnon asked about the note (4/5/02) and the revision and wanted to know who put that on to the drawing.

R. Varney said Mr. Folsom who works for Lakeshore Construction probably did it.

T. Kinnon verified that it was not done by the NHDES and R. Varney said all the plans were prepared by Lakeshore Construction.

C. Westen asked if the boathouse is 38' and not 48' back from the reference line.

R. Varney said yes the boathouse is 38' not 48' back from the reference line

K. Chamberlain said it looks like it is 48' back as shown on sheet 2 of 4 of the application.

R. Varney said this is all very interesting but the boat slip aspect has never been challenged. He said they are not looking for any relief there. He said the NHDES inspected the property and they are in complete compliance with the boat slips and the only reason they are here tonight is because the height and he said they are not prepared for the questions the Board.

K. Chamberlain said when he comes before the Board he needs to be prepared to answer questions the Board may have.

T. Kinnon offered to explain to the applicant as to why the Board is asking the questions. He said because the location of the structure determines what your height can be. If he is back 30' than he can go up 35' so that is why they need to determine where the foundation is.

K. Chamberlain told T. Kinnon that he shouldn't venture opinions like that and the zoning regulations say a boathouse can only be 15' above water level. He said he does not care how far back you go into the shoreline; you cannot raise the height of the peaked roof above 15' for a boathouse. He told Mr. Kinnon to refer to his zoning regulations.

K. Chamberlain asked if R. Varney sees the note on the plan on R. Varney said yes the note "4/5/02 revised to locate 10' further into applicant's property".

K. Chamberlain said yes, he was looking at sheet 2 of 4 proposed conditions and he is looking at the shoreline location with the hashed line that R. Varney pointed out to the Board and the 38x38 boathouse and the hashed areas in front of the boathouse extending out to the existing shoreline that has a dimension of 16'. He has concern about there being a violation of the original wetlands permit from the existing shoreline he does not see where it says the applicant can go any further in than 38' x 38'. He continued by talking about the 2001-1294 wetlands permit R. Gayner received from the NDHES and read the approval and conditions of the permit into the record and asked if the permit was ever recorded at the BCRD. R. Varney said he did not know if it was recorded. R. Gayner said Lakeshore Construction handled all the permitting.

K. Chamberlain said the conditions of approval state a copy of the recorded permit shall be submitted to the NHDES prior to construction and he asked if it was ever submitted to the NHDES. R. Varney said yes it was submitted to the NHDES prior to construction.

K. Menici said she checked with the BCRD and with the NHDES and there is no record that the permit was never recorded.

R. Varney said he was unaware the permit was not recorded.

K. Chamberlain said he has a lot of questions that he had picked up in the process of this Appeal. And he said personally it has an effect in his opinion as to how things were handled from the Town level and asking for the Building Inspector's input and the local level of issuing a permit for the boathouse.

R. Varney asked K. Chamberlain in what way.

K. Chamberlain said he feels as if this wasn't done and performed at this level to require a paper permit to change the boathouse from what was required, that was never recorded, to go from a 15' high boathouse to a 34' high boathouse to him shows a pattern.

T. Kinnon said he does not feel as though the Board should be speculating and they should just be getting facts.

K. Chamberlain said to him this is part of the fact gathering and they are questions he would like to address.

T. Kinnon said he thinks K. Chamberlain speculated.

R. Varney said they are appearing before the Board about the height and feels that because the permit was never recorded at the BCRD is not an issue and he said the contractor was suppose to do it. He said that they would attend to the recording of the permit if that were important to the Board. He said no one has suggested for a minute that anything that was done out there below 519.00 in height was unlawful, improper, excessive, beyond the scope of the permit in any way.

K. Chamberlain said the permit is supposed to hold the permittee to what the approval is for and the permit is not even signed.

R. Gayner said he thought the contractors were taking care of it and he did not do anything intentionally to circumvent the regulations. He spoke about the distance back, he said the NDHES allowed them to go back significantly and he said they went back less than they allowed.

R. Gayner said they ran into significant costs when they hit the rail bed during the dredging.

K. Chamberlain asked if R. Gayner was issued another permit from the NHDES to do the additional work beyond the scope of the 38' x 38' boathouse.

R. Gayner said it was always contemplated that this would go in somewhat and he said everyone does and the front of the boathouse is never exactly at the shoreline.

K. Chamberlain said R. Gayner never answered his question.

R. Gayner said yes and all the permits that were issued initially, contemplated digging back a portion beyond the 38'. He said the boathouse itself is 38' x 38' the poured section but it was always contemplated that it would be set back somewhat, but it is setback actually less than what was originally planned.

K. Chamberlain also read from the NHDES permit about the height restriction being 15' with the elevation of 519.32 above normal high water elevation of 504.32. K. Chamberlain asked if R. Gayner was aware of that and R. Gayner said he is aware of that and that was what was modified.

K. Chamberlain asked where R. Gayner get the idea that he could exceed that.

R. Varney said that is exactly what brings them in front of the Board; on April 2, 2004 the State of NHDES said they can build the new structure. He said the copy of the letter was forwarded to the Town of Alton.

K. Chamberlain spoke about the letter to R. Gayner dated April 1, 2004 from the NHDES that states, "please note the Town of Alton does have an ordinance relative to the height of shoreline structures". He asked if R. Gayner was aware of the document and R. Varney said yes.

K. Chamberlain spoke about the line of questioning he has been asking and it will come full circle because the Administrative Appeal reflects on the Building Inspector and K. Chamberlain wants to know where the gap came from, with this (height restriction) being pointed out in the permit that was issued by the NHDES that states that 15' is the elevation allowed. And he said

that the Town of Alton's zoning regulations that was pointed out to the applicant in a letter from NHDES dated April 1, 2004.

K. Chamberlain also wants to ask the applicant if he ever picked up a copy of the Town of Alton's zoning regulations because he said they expect anyone when they do things in this town they are supposed to be familiar with all the regulations before they start a project.

R. Varney said they agree that ignorance would not be grounds for an Administrative Appeal or an Equitable Waiver and they are not claiming ignorance.

R. Varney accused K. Chamberlain of going on to the Equitable Waiver discussion because he is trying to get into what Mr. Boyers said to Mr. Gayner and whether or not Mr. Gayner should have relied on it; he would be happy to go there but he said there are two other issues, one being the legal interpretation and the second on whether there are grounds for a Variance. He said those discussions are separate and have nothing to do with what discussions Mr. Gayner had with Mr. Boyers. He said the Variance is a completely different set of circumstances and he said he believes that the Board has had a chance to speak to Mr. Sessler before the meeting and he should have updated the Board on how the law of Variances has changed and how that might apply to this application. He would like to keep all applications discreet and he thought the Board wanted to do that also.

K. Chamberlain said there will be a possible cross over and he does not think his line of questioning as far as crossing over.

R. Varney said the NH Dept of Historic Resources approved the boathouse as proposed.

R. Varney said he was very surprised to hear that some research has been done on this and that someone has had some discussion with you about what has been recorded at the BCRD and he wants to know where this discussion came from and where the information came from. He said he didn't submit anything to the Board about it and he asked K. Chamberlain where did he learn about it.

K. Chamberlain said it was supposed to be registered in the BCRD and when he read it in the permit that it was supposed to be recorded he asked the Town Planner if there was a record of it and if she could get a record of it.

R. Varney stated that K. Chamberlain already had discussions with the Town Planner about this and she's done research for you. R. Varney said that is the problem with this Public Hearing because he is supposed to know what the Board knows and he was not informed that there was research was going on. He said now he does not know where he is going with the case.

K. Chamberlain said within the normal process of the case he researches information.

L. Avery said to Mr. Varney that he is R. Gayner's attorney correct and R. Varney said yes.

L. Avery said if you read this information and wouldn't he have the same questions and perhaps he would call the BCRD to research yourself whether the permit would be recorded.

R. Varney said if K. Chamberlain asked him the questions he would go and research them and then he would come back into a Public Hearing and inform the Board.

L. Avery said to R. Varney or perhaps come to the Public Hearing prepared figuring these questions might arise. He asked Mr. Varney to never ask a question you do not want know the answer to correct.

R. Varney spoke about an example of a Judge saying to the lawyers that, "I've checked up on this and here's what I found". R. Varney said he can't do that and he would rather have the Board not do that.

L. Avery said they are still working on the Administrative Appeal to figure out if the Code Officer did the right thing or the wrong thing.

The Board said the line of questions they are asking are not out of line.

M. Perry said she wants to get back to the Administrative Appeal discussion and all the questions are valid but it's not addressing the issue. She said the questions that were asked in the beginning that had to do with where the shoreline was, has to do with the Administrative Appeal and that she thinks that is where they should continue until they can answer those questions and then move on.

R. Gayner wants to explain the chronological order for the Board. He said it started as a typical dredged in boathouse because the NHDES does not allow boathouses to be over the water anymore and they do not allow flat roof boathouses. He explained that when the Historical Society got involved he asked them and R. Pelletier (NHDES) if they would be willing to have 15' flat to keep the continuity of the rail bed and then put a structure on the back of it. He said R. Pelletier said that is highly irregular but if the NH Dept Historical Society feels that, based on the property that it is something that they would endorse, than the NHDES would consider it. He said that is why they got the letter from the NH Dept. of Historical Society and then the change in the permit from the NHDES. He said it is a unique situation where 15' is flat and then the structure starts behind it. It was all predicated on a drawing that was done and presented to the Boards and it was approved by the NHDES with the provision that they do not have an architectural component to their approvals. They gave full approval for the dug in boathouse and all the parts of the boathouse that were below 519.32' which is 15' above high water mark of 504.32'. He said the NHDES told him to contact the Town of Alton with respect to the change. He said that was the chronology of the issues that brings us to the point to where the Board was asking questions as to how did things change and did he know what was going on.

K. Chamberlain said it doesn't do any good for this case if they do not ask questions that the Board feels are pertinent because this probably will go to another level of court.

T. Kinnon asked K. Chamberlain again not to speculate where the case is going from here.

K. Chamberlain said there is nothing wrong with speculating.

T. Kinnon said yes there is in this case, there's grave speculation because you just said you made a determination.

M. Perry said no one has determined anything and the Board is here to listen to discussion, period.

C. Westen asked R. Gayner that the NH Dept. of Historical Resources and they agreed to the flat roof and the NHDES agreed and R. Gayner said yes. C. Westen asked if R. Gayner submitted plans of what you were going to do. R. Gayner said yes. C. Westen asked if R. Gayner considered the same courtesy and opportunity as well as reflect that possibly it should be required to be submitted to the Town of Alton.

R. Gayner said he had no idea that was required everything was supposed to be submitted to the NHDES and as soon as he received the letter from them, he called Mr. Boyers immediately.

R. Varney said that Mr. Gayner tried to call Mr. Boyers on a number of occasions and had a great deal of difficulty getting a call back. And he finally got B. Boyers and asked Mr. Boyers to come out to the site to look at it, and Mr. Boyers admits this. R. Varney said that is a perfectly reasonable thing to do if you are building something to have the Building Inspector to come to the site. R. Varney said that Mr. Boyers was too busy and that he could not do it. R. Varney continued by saying in terms of courtesy, then what happened was Mr. Boyers said as long as the structure is 30' back from the shore and no more than 35' high you are fine. R. Varney said that R. Gayner repeated back the information to B. Boyers and B. Boyers confirmed the requirements. R. Varney said when he deposed B. Boyers; B. Boyers confirmed what he had said. R. Varney said the discussion about what was said goes to the Equitable Waiver and he said to the Board they should consider that as part of the Administrative Appeal and even if the Board does agree

with Mr. Gayner's version of the events, that has nothing to do with interpreting the ordinance.

He said the questions about the shoreline are appropriate to ask and he would submit for the Board's consideration that no where in the ordinance does it say that dredging in changes the shoreline for the purposes of the Town of Alton. R. Varney said the other question as to whether or not the Board will accept Mr. Tom Varney's plan as being accurate as depicting the height and location of the structure.

M. Perry said she wants to go along with the same line of questioning that C. Westen was trying to ask where the base line is and then get your height from that and that's the Administrative Appeal and she would like to stay there until they have enough information to move on to the next issue.

K. Chamberlain asked B. Boyers to give his report including: why he issued a Cease & Desist Order, chronology, history and a time line of the events happened.

B. Boyers spoke about August 6, 2004 inspection where the NHDES took pictures and that he issued a Cease & Desist 53 days later. He said he waited to hear from the NHDES because he expected that they would handle it as they issue permits for the boathouses and when time went by and they did not handle it he issued the Cease & Desist 53 days later. Allison Gurley of NHDES took pictures and then the NHDES issued a Cease & Desist also.

K. Chamberlain asked B. Boyers if he had original drawings to work from that were submitted with the permit. B. Boyers said yes. K. Chamberlain asked if the structure reflect that. B. Boyers said no. K. Chamberlain asked what is not in compliance with it. B. Boyers said the height of the structure itself.

M. Perry asked at what stages of construction have to be completed for B. Boyers to go to the site to inspect. B. Boyers said the foundation inspection was done. He said for a boathouse there could be a wiring inspection and sometimes a plumbing. M. Perry asked about the original permit and if all that the application was for was for a boathouse. B. Boyers said yes the original permit showed the boathouse to be 15' high with a hip roof and no other permits were pulled.

K. Chamberlain asked B. Boyers when he interprets the zoning regulations and it says a boathouse is only allowed a height of 15', does B. Boyers consider this structure, which is outside of the 30' waters of NH, is he allowed to build higher than 15' or no matter how far into the embankment the boathouse goes, does he still need to maintain a 15' roof height.

B. Boyers said since he started in 1997 and it has always been considered what you dig in is part of the boathouse and as part of the shoreline.

K. Chamberlain asked if it is wise to use the height of the water as the reference line to measure heights. B. Boyers said he has to measure from full lake level.

K. Chamberlain asked if B. Boyers received a new building permit application regarding the changes to the boathouse that exist that a Cease & Desist was issued on. B. Boyers said no.

K. Chamberlain asked if a new permit is necessary.

B. Boyers said if you change anything on a permit you have to submit new information. It changes the permit itself and it increases the fees for it. B. Boyers spoke a bout people who want to go over the 15' height requirement, usually for a copula, they must come into the office before constructing anything and then applied for the Special Exception to be allowed to be over the height requirements.

M. Perry asked about the original building permit application and the cost of improvements \$38,000.00. B. Boyers said that was the cost listed on the original permit for the boathouse.

M. Perry asked would B. Boyers assume that to be the cost of what is out there now.

B. Boyers said if it (existing structure) was on the permit possibly, but that was not on the permit.

K. Chamberlain asked about a section on the building permit marked as “boathouse” and one section that is marked “residential” and he asking for clarification because they normally do not allow residential uses in a boathouse.

B. Boyers explained that people are referring to their home on the site not the boathouse and it is not an issue.

K. Chamberlain asked R. Gayner if he wanted to use it as a living unit and R. Gayner said no.

Discussion about the additional design components of the stairwell and French doors that exist on the structure. Discussion continued about the stairs being used as access to the boathouse from upstairs area and there are plans for building a dwelling unit there.

R. Gayner said it was never his intention to put a dwelling unit there. R. Gayner said the structure is precisely the dimensions from the plan that was submitted to the NH Historical Society.

T. Kinnon spoke to R. Gayner about submitting plans to the Historical Society and what appears to be about a 2-year permitting process, but yet he felt it was sufficient to have a phone conversation to substantially alter what had been permitted with the Town of Alton.

R. Gayner said it was his understanding that dug in boathouses are the prevue of the NHDES because that is where all the initial permitting has to be done. He hired Lakeshore Construction to handle all permitting. He said that when they got the approval for the changes from the NHDES the NHDES sent a letter out saying the boathouse can be modified without further approvals because the NHDES does not have an architectural provision; however he must comply with the Town of Alton. R. Gayner said he immediately called the Town Planning Department.

T. Kinnon said that R. Gayner spoke about Lakeshore Construction was responsible for all permitting and R. Gayner said yes they were and they handled all the permitting up to the point where the dug in boathouse was actually completed and finished. R. Gayner said the change in the upper structure and the flat roof, R. Gayner said “I handled through the NHDES it was a request not a formal application. He said it was a request to change the ordinance because they had outlawed flat roof boathouses.

T. Kinnon asked for clarification about R. Gayner going to the NDHES for the changes and not Lakeshore Construction. R. Gayner said yes Lakeshore Construction did not handle the changes because it was not related to the boathouse.

T. Kinnon said R. Gayner knew enough to go to the NH Historical Society and the NHDES and he asked if R. Gayner submitted revised drawings to the NHDES and the NH Historical Society and R. Gayner said yes NHDES had drawings of the revisions and he said the NH Historical Society is not a permitting agency they recommended to the NHDES to approve the proposed structure but yes they had revised drawings of the plans.

T. Kinnon clarified that the NHDES and NH Historical Society had seen drawings of the revised plans but the Town of Alton did not.

R. Gayner that’s correct because he said the Building Inspector refused to come see the plans.

T. Kinnon said all that the Board has heard about is a phone conversation we have not heard anything about R. Gayner or an agent coming to Town Hall with paperwork and being refused.

R. Varney said that is true but he said remember the nature of the response that he got from the Building Inspector.

R. Gayner said he was told to be 30’ from the original high water mark that it would be in compliance with Town ordinance. He said he told B. Boyers that he was calling in reference to the boathouse and he explained the letter NHDES sent and he explained the proposed change.

He said this is a different boathouse because there are no other boathouses that have 15' of flat roof and then a peaked structure on the back of it. He said B. Boyers asked how far back is the boathouse from the flat roof. R. Gayner said it is 30' back. B. Boyers said if it is 30' back from the high water mark you can go up 35' in height. R. Gayner asked B. Boyers to come to the site and B. Boyers said he would try to because he is very busy.

T. Kinnon asked B. Boyers if he would agree with R. Gayner's statement.

B. Boyers said he bases everything on the fact that the setback and heights are 15' in height from the high water mark and the setback is 30' from the high water mark.

T. Kinnon asked if B. Boyers could have the impression that this structure was separate from the boathouse. B. Boyers said no.

M. Perry said since R. Gayner never submitted new plans to the Town of Alton so B. Boyers could see the changes and that is where they are today.

R. Varney asked about when the discussion about the Administrative Appeal would be done so he could move on to the Variance.

K. Chamberlain said no the Board has more questions.

C. Westen said it would have been pertinent for R. Gayner to bring the revised plans to the Town of Alton for review. C. Westen said it seemed as R. Gayner was concerned about the project than if he was that concerned, he should have brought plans to the Town of Alton. He said R. Gayner said he wanted to be sure there was no mistake in what he was proposing but R. Gayner did not bring plans to Town of Alton for approval.

R. Gayner said he was not concerned because his neighbor had to tear down his cottage because it was too close to the shoreline and he was aware of the ordinance and that as long as they were 30' back with the structure they would be in compliance. He was not concerned he was doing anything wrong and that he was correct in saying that he was 30' back. He said he got a letter from the NHDES saying to make sure he got in touch with the Town of Alton. He also spoke about the NH Historical Society recommendations that he was approved to build the structure.

M. Perry said that a picture is worth a thousand words and that is why the Town of Alton needed prints and that is why there is a planning office.

R. Gayner said that if B. Boyers would have looked at the structure they would not have this problem and he was sure that Mr. Boyers drove by Temple Drive many times during the summer and this could have been prevented.

K. Chamberlain spoke about the height violation being cleared through the other state agencies that R. Gayner had gone through and he mentioned the Varney plan submitted to the Board and according to the dimensions on the plan it seems to him that R. Gayner had already planned on building the structure, even after he got the building permit from the Town of Alton. K.

Chamberlain said he doesn't see how a hip roof, as proposed and approved, could be put on with the walls as high as they are.

R. Gayner said it was going to be dredged out wider than the boathouse there was going to be a stairwell that went down and they were not going to keep the integrity of the rail bed and at the same level.

K. Chamberlain said R. Gayner is missing the point because the original permit was for a boathouse not to exceed 15' with a hip roof and the measurements do not make sense for what was approved and what is built.

R. Gayner said that K. Chamberlain can't possibly be insinuating that he spent all this money as a scam. He said he never intended originally to build it this way and one was the NHDES insisted to the NH Historical Society because of the rail bed.

C. Westen asked if the decision to go to the Historical Society was done prior to the walls being poured and R. Gayner said the Historical Society had to approve digging in the rail bed and that the walls were poured before the approval.

C. Westen said it gives the appearance since the walls were poured and the height of those walls there would have been no way to put a roof on and not exceed the approved height. He said it gives the appears since the walls were already poured before he went to the Historical Committee for final approval he was planning on building something else.

T. Kinnon verified with R. Gayner that the walls were poured in the wintertime, prior to April of 2004. R. Gayner confirmed that the walls were poured in the wintertime before the spring of 2004.

B. Boyers said he has never had any problems with boathouses maintaining the 15' requirement in the seven years he has worked for the Town of Alton. He said others have complied by going to the ZBA for Special Exception to add on to any boathouse, i.e. for a copula.

K. Menici spoke about the fact the boathouse is 30' back from the shoreline and she said the shoreline has been altered and the boathouse is not 30' back from the water, she said the shoreline sits behind the boathouse. She said that is how the Town and the NHDES have consistently measured the shoreline setback.

K. Chamberlain verified that once the shoreline is altered and is dug into for a boathouse the shoreline now included the portion that was dug in and that means according to Alton zoning he still has to comply with a 15' ridge height no matter where the structure is located.

K. Menici said yes.

Discussion ended on the Administrative Appeal section of the hearings.

K. Chamberlain announced a break at 9:20 and called the meeting to order at 9:25.

Case #Z05-06

Map 53, Lot 3

Variance (Boccia-Area)

Robert Gayner Trustee

62 Temple Drive

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for a Variance from Dimensional Requirements in order allow the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

R. Varney spoke about the variance criteria and the hardship criteria that apply to the property.

R. Varney said that the boathouse does not interfere with any abutters and that there was a letter from an abutter that is in support of the application that K. Chamberlain read the letter into the record.

R. Varney spoke about the 15' height limitations and that the abutter stated they are in favor of the structure and he is asking the ZBA is there any practical reason that they ZBA would enforce this literally.

R. Varney said the structure does not harm the rights of others.

R. Varney said a boathouse is an allowed use and the owner wants to restore the historic value to the property. He said there is no purpose in holding the 15' height restriction for the boathouse. He said there is no fair and substantial purpose and the literal enforcement of the ordinance creates an unnecessary hardship of NH Law.

K. Chamberlain said the original plan that was submitted was designed to house boats and he

asked if the current structure has the same purpose.

R. Varney said both would have equal utility.

K. Chamberlain asked if the structure provides any public purpose or need.

R. Varney said not yet but it will have historical value when it is complete and he does not feel that the Public benefit should be applied to this application and that this structure should not be subjected to the zoning requirements and the height does not affect anything or anyone else.

M. Perry asked about the replication of the site and R. Varney said they are trying to create a representation of the older site and replicate a section of the track.

K. Chamberlain said this use provided no other practical use to the public and it seems very self-serving. R. Varney said of course it does but that is not a criteria for granting a variance.

R. Varney said the NH Dept of Historical Resources does believe it has public value. He doesn't think that public value is an important criteria for the ZBA to be concerned with. He said the law of variances has changed and it used to be that if you can't find an economically viable alternative use for your property, no hardship, no variance and now the rules have changed and he said it doesn't make sense to impose a 15' height requirement 30' back beyond the natural shoreline. And he said it doesn't affect any one else's rights he said if it were affecting anyone else's rights you would certainly be hearing from them.

R. Varney said B. Boyers has said there is nothing out of compliance with the structure below 519.32 feet; the only issue is the height of the structure.

M. Perry said they wanted to replicate the railroad site but the boathouse on the (old) picture was in front of the railroad tracks in back of the structure.

R. Varney said no they are just trying to replicate not duplicate.

K. Chamberlain asked R. Varney about the reason that the NHDES and The Town of Alton put the restriction of 15' in height for boathouses.

R. Varney said he can see why they would put restrictions on the height because of not wanting living quarters and the issue of overcrowding that could take place on the waterfront he can agree with those reasons for the height restrictions. He said that is why they are here and that the ZBA can say they have policies and regulations in place to protect the properties however, in this case there are situations that would warrant a variance and it wouldn't make sense to literally enforce the height restriction. He said all he has to show now is that it doesn't hurt anybody, it doesn't diminish property values and it doesn't interfere with the public and private rights of others. He said the ZBA ought to grant the variance and find in favor of for those three findings.

K. Chamberlain asked him if the people of NH and people from out of the state are harmed by the oversized structure.

R. Varney said that K. Chamberlain may have reached that aesthetic judgment that the structure is ugly and should be knocked down. He said K. Chamberlain is assuming that the structure is harming people and R. Varney said the structure is not hurting anyone and the site is not congested and you cannot see any other houses from the site therefore it cannot be construed as harming the public rights of others.

R. Varney said if they are denied on the Administrative Appeal they are asking for the Variance in order to maintain the structure and relax the zoning ordinance.

K. Menici spoke about the Hardship criteria for the area variance there are 2 criteria that the Board needs to consider. One is "special conditions of the property". She explained that includes a lot that is too small for building, steep slopes, wetlands. She said a criteria is not "that this is where we want to build it". The other is the benefit sought by the applicant can or cannot

be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance and K. Menici said the applicant had a building permit to build the original structure.

R. Varney spoke about a new Boccia case that has been handed down and that the criteria have been relaxed and the Board should use the new criteria. He said this is the only place where the railroad structure can be located. He said special conditions do not have applicability to this application and he said the benefit sought by maintaining the structure in its present location cannot be achieved in another location because this is the only place the railroad track intersects with the boat house.

K. Menici said the Boccia decision and the NH Municipal Association recommends that the ZBA use the current Boccia criteria to decide the area variance. K. Chamberlain asked if the statement of reasons language they are currently using in their worksheets is applicable for the area variance criteria. K. Menici said yes it is what the NH Municipal Association recommends. R. Varney said the ZBA is going to meet with J. Sessler and he is asking the ZBA to use the new criteria to decide the case.

C. Westen asked R. Varney if they were under different circumstances wouldn't they come into the ZBA for a variance prior to constructing this.

R. Varney said if R. Gayner had thought that somebody would object to this than R. Varney would have advised R. Gayner to bring revised plans into Town Hall. R. Varney said that didn't happen and R. Gayner went ahead and built the structure and the Building Official says it has to come down because it doesn't comply and now they are asking for an after the fact variance.

C. Westen said but you do acknowledge that the proper documentation was not filed with the Town and now you have to come in after the fact.

R. Varney said he doesn't acknowledge that it wasn't proper; he will acknowledge that it was not optimal.

K. Chamberlain asked K. Menici about the wording "proposed use..." in the Boccia criteria and doesn't that mean that the variance is supposed to be before the building is built. K. Menici said yes that is the assumption that the variance application is for a "proposed use and should be obtained prior to any building.

R. Varney said that fact that this has been built should have no bearing on their consideration. He said it has nothing to do with it and it should not matter whether or not the structure is built the criteria are the same and he hopes the ZBA agrees with him.

B. Boyers has nothing to add on the Variance case and reminded the Board the height requirement is 15' above the high water mark. K. Chamberlain asked B. Boyers if he would have issued a permit if the plans showed the building above 15'.

B. Boyers said no he would have sent them to the ZBA for a Special Exception or a Variance depending on how much it was out of compliance.

T. Kinnon asked B. Boyers if the variance were granted, would the size of the boathouse allow R. Gayner to use it for anything other than storage.

B. Boyers said it would be just a boathouse as long as it remains labeled a boathouse.

C. Westen asked B. Boyers about the garage structure at the back of the boathouse would be considered another or separate use and B. Boyers said yes it would and it would require another building permit.

R. Varney reminded the Board that they can impose conditions of approval.

K. Chamberlain closed the discussion on the Variance.

**Case #Z05-05 Map 53, Lot 3
Robert Gayner Trustee**

**Equitable Waiver of Dimensional Requirements
62 Temple Drive**

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for an Equitable Waiver from Dimensional Requirements in order to maintain the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

R. Varney continued with referring to the memo he presented to the ZBA and went to page 8 and spoke about the criteria for granting an Equitable Waiver. He said it is from 228a and it is dimensional requirement and that would apply. He said the next criteria would be if the property was just sold/purchased and that does not apply in this case. He said in May of 2004 the applicant received verbal approval from the Code Enforcement Officer, B. Boyers.

R. Varney continued with his application and spoke about the amount of work and significant expense that has taken place since August 6 to September 28, 2004. R. Varney said the inactivity of your enforcement officer between August 6 and September 28 is a factor the Board should consider in the issuance of the Equitable Waiver since 53 days went by.

K. Chamberlain asked B. Boyers about the time that had lapsed and B. Boyers said he was waiting for the NHDES to research the file and application and get an answer and he got an answer from the NHDES on September 2, 2004. He said the NHDES visited the site on September 26, 2004 and they also knew of the violation on August 6, 2004 as well.

R. Varney asked K. Chamberlain to ask B. Boyers if he had any communication with the NHDES between August 6 and September 2, 2004. B. Boyers said not to his knowledge.

R. Varney said there are 3 unexplained fax sheets from the NHDES dated September 2, 2004 with no information as to what it was regarding. R. Varney said it clearly looked like a response to an inquiry. A copy of the letter from April 2, 2004, which had earlier been sent to the Town of Alton, and the original letter was not in the file. The second was the division of Historical Resources and they were all items taken from the wetlands board file.

B. Boyers said the letters were received into the office and they were put into the files.

R. Varney said it is valid for the Board to consider both the 53 days and the 26 days that there was a lapse in communication.

R. Gayner said that while he was away a construction worker told him that some people in a boat came over and they looked at the building permit and they took pictures of the structure and the worker said they never said their name. R. Gayner said that he never heard anything else about that situation. R. Gayner said that the NHDES does not have a code for the height of buildings and the only code they have is that the boathouse cannot have a flat roof. He said it was clear that the boathouse was obviously higher than 15'. He said it was 15' to the flat roof and then another 22' above that. He said it was very clear to Mr. Boyers when he came up to the site and based on his interpretation of the zoning ordinance and R. Gayner said B. Boyers should have come back the next day and told him about the violation. R. Gayner maintains that he built the structure and it is there now and that B. Boyers told him he could build it and B. Boyers is responsible to R. Gayner for all the money he spent.

R. Varney said the criteria for an Equitable Waiver relates toward R. Gayner and that his activity did not come in bad faith. R. Gayner spoke to everyone he could and it does not harm anyone and there is no evidence that the property values are effected and the cost of correction would outweigh the benefit and that it would cost \$100,000 and there is no public benefit to taking it

down.

C. Westen asked if B. Boyers if they (NHDES personnel) identified themselves on August 6, 2004 and B. Boyers said they were in the Police Boat.

C. Westen said it seems it would have been prudent for R. Gayner to call the Police Department or Town Hall after a Police Boat came to his property and got out and took pictures.

R. Gayner said C. Westen said he was concerned and R. Gayner said, "First of all I was not concerned" and the only reason he called B. Boyers was because of the letter from the NHDES said he should. He said the worker on site did not say it was an Alton Police Boat. R. Gayner said he was surprised that no one from the NHDES and B. Boyers ever visited the site. R. Gayner said he is a busy guy and he doesn't sit around and call the NHDES and call people to the site. He doesn't find it strange that people would stop by and he was shocked that he got the Cease & Desist letter and he was surprised that people did not stop by before August 6 because they were building all summer. He said he honestly believed what he was doing was in compliance with the NHDES and what he was told was ok to do. He said he would not have spent the money to finish the project if he thought he knew he was in violation. He believes he was in compliance with the NHDES and what he was told. He said he did not intentionally build this with it being violation, all he got from the NHDES was to contact the Town of Alton and that is what he did.

C. Westen asked about not changing the footprint and he asked if the 38' fits over the boathouse R. Gayner said yes. C. Westen asked about the back part of the structure and R. Gayner said that is beyond the 38'. C. Westen said so they did deliberately go beyond the 38' and that was confirmed. R. Varney said the back end is not in the dredged in part. C. Westen continued by saying it is a violation of the 38' footprint that was in the permit and if it is not within the 38' footprint than it is in violation of the building permit.

L. Avery said they are talking about the 38'square boathouse. R. Varney said yes than if you are referring to the parameters of the Town of Alton building permit are 38' and than it is in violation of the building permit. He went back to that B. Boyers said as long as it is 30' back and less than 35' high than he is ok.

M. Perry said but that is not part of the building permit.

C. Westen asked B. Boyers if he said anything and B. Boyers said anything that was deviated from the original permit application would need a new permit. B. Boyers said the conversation with R. Gayner was about height only from the high water mark and the piece on the back was not discussed.

K. Chamberlain asked if B. Boyers if the additional structure was ever on the building permit and if there was ever another building permit reflecting that and B. Boyers said no.

K. Chamberlain asked if the applicant called for any inspections and B. Boyers said that he only did a foundation inspection and that was what would be required. K. Chamberlain asked if he would have been called for a framing inspection and B. Boyers said yes he would have been called for a "rough-in" and that and that usually happens after you get the roof on. Then a wiring inspection would have been next if there was any wiring. B. Boyers said he was not called for any other inspections and it says that on the building permit that 3 inspections are required.

K. Chamberlain asked B. Boyers about the notice of the violation on August 6 and if at that time was he called to the site for a framing inspection yet by the applicant and B. Boyers said no. K. Chamberlain asked if it is B. Boyers' duty to run out there and issue a Cease & Desist order without properly researching the project and B. Boyers said no and there is no time frame.

K. Chamberlain said had the applicant asked for a framing inspection and B. Boyers had gone to the site B. Boyers would have recognized there was a framing issue and a problem.

B. Boyers said he would have noticed any changes if he had been called for any additional inspections and he was never called for an additional inspections.

K. Chamberlain wants the Assessor to go out and put a value on the building and property before the next meeting.

T. Kinnon spoke about the Petition for Appeal to the NHDES and the drawings submitted to the NHDES and that they do not show the addition to the back of the building and the drawings that were sent to the NHDES for an appeal are not accurate rendition of what the structure is.

R. Varney said the purpose was to show the NHDES that they were not putting any super structure over and above the 15' level. The NHDES has conceded that they have no interest in the height only in flat roofs and the have waived their concerns over the flat roof. He said the NHDES has deferred to the Town of Alton and will be accepting of the Town's decision.

R. Varney said that because of the nature and content and tone of K. Chamberlain's questions it is apparent that K. Chamberlain has already pre-judged the issue to him and to R. Gayner and they respectfully request that K. Chamberlain recuse himself and withdraw from the proceedings. He wants it known for the record that he has asked K. Chamberlain to recuse himself.

K. Chamberlain said he does not feel he needs to recuse himself and believes he has been fair presiding over the case.

K. Menici spoke about the "Petition of Appeal" that was submitted to the NHDES. She spoke about the sketches that were submitted and she spoke about the drawings that were dated 5/14/03 and the building permit was not filed with the Town until October 15, 2003 and she is informing the Board that the drawings were available.

R. Varney said that those drawings were for when R. Gayner was seeking approval.

K. Chamberlain said the date does not approve anything one way or another.

K. Chamberlain asked the applicant about the Equitable Waiver request about the deposition when B. Boyers was too busy to go to the site and return the calls and he said they said that B. Boyers to say as long as the 30' from the shore and 35' high they were fine. K. Chamberlain spoke about the ignorance of the law and if you build anything over \$1000.00 a permit is needed. He said if anything was changed from the original permit issued that a new permit was needed and he said there was ignorance of the law for him to not go back in front of the Building Inspector and to continue building and to put more money into the building. K. Chamberlain said it shows ignorance of the law and seems like bad faith by going on a verbal statement to continue with a project that already was unclear. He said anyone would have done a due diligence would make sure they would acquire a new permit for the changes.

R. Varney said that R. Gayner relied on what B. Boyers said to him and B. Boyers has admitted what was said. He said R. Gayner was told by the NHDES to contact the Town of Alton and Mr. Boyers said what he said. R. Gayner said that something is wrong when he can't get B. Boyers to the site because he is too busy and maybe B. Boyers needs help.

R. Varney said B. Boyers does not have a record of when he did the foundation inspection and B. Boyers said no.

K. Chamberlain asked if there was a place on the building permit to sign off on for when the inspection was done and B. Boyers said yes on the permit but there is no record in the file of when the foundation was done.

Discussion about the concept plans and when R. Gayner got the building permit from the Town of Alton and they had not gotten a permit from the NHDES. The conceptual plans were put in the file by R. Varney because the NHDES said they had no idea of the height and R. Varney wanted to prove to the NHDES that there were plans submitted showing the height.

R. Varney said that if he was going to build what the picture shows in the conceptual drawings than R. Gayner would not have any reason to call Mr. Boyers. R. Varney said that R. Gayner called Mr. Boyers because the Town of Alton had been notified on April 2, 2004 of the change. M. Perry just wanted the clarification of the dates.

R. Varney wants to know procedurally how the Board will proceed.

K. Chamberlain said that he will open up the hearing to the general public input.

K. Chamberlain opened up the hearing for Public Input for anyone who would speak in favor of the application.

Samantha Chamberlain got up to speak in favor of the application she said it should be able to continue because it is a nice boathouse and there is no problem to waters being cause by the boathouse and she doesn't see the issue in tearing down the boathouse.

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

K. Chamberlain offered a rebuttal to the petitioner and there was none.

K. Chamberlain closed the Public Input portion of the hearing and in order for the ZBA to get advice from the Town Attorney the applications will be continued until April 7, 2005. At the meeting the ZBA hopes to have a decision on the appeals.

R. Varney's said that at the April 7, 2005 meeting he is assuming that the Board will not plan to reopen the evidence in any way. K. Chamberlain said no. R. Varney said the meeting with Town Counsel will be as a Board in Executive Session. K. Chamberlain said yes. R. Varney said there will be no other discussion on this case outside of the Executive Session. K. Chamberlain said yes. R. Varney said the Board will have their regular deliberative proceedings on April 7, 2005 and K. Chamberlain said yes. K. Chamberlain asked if R. Varney will attend because the meeting will be open to the public. R. Varney said they will be there.

R. Gayner said before the Board closes he wants to talk to the Board. He would like the Board to know he did not come into the Town of Alton to build this intentionally out of compliance. He continued his discussion on about the boathouse and he said to tear down the boathouse now doesn't help anyone and it doesn't set precedent for future applications.

K. Chamberlain informed R. Gayner that the hearing had been closed.

OTHER BUSINESS:

1. Approval of Minutes of the February 3, 2005 Meeting.

Motion made by L. Avery, seconded by M. Perry to approve the minutes of February 3, 2005 meeting as presented, motion carried with all in favor.

Discussion about the meeting with Attorney Sessler at 6:30pm on March 10, 2005 or possible for a second choice to do it at 6:30 pm on the March 7, 2005

Motion made by T. Kinnon seconded M. Perry to adjourn at 11:10 pm, motion carried with all in favor.

Respectfully submitted,

Stephanie N. Verdile
Alton Zoning Board of Adjustment Secretary