

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT**

**Public Meeting  
March 4, 2010  
Approved 8/12/2010**

**I. CALL TO ORDER**

The meeting was called to order at 7:10 p.m. by Timothy Kinnon, Acting Chair.

**II. INTRODUCTION OF BOARD MEMBERS**

Timothy Kinnon, Acting Chair, introduced himself and the following members:

Timothy Morgan, Member  
Lou LaCourse, Member  
Stacey Ames, Planning Assistant  
Sharon Penney, Town Planner

It was also noted for the record that a representative from the Board of Selectmen is not present.

**III. STATEMENT OF APPEAL PROCESS**

The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds, which the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

T. Kinnon stated that they do have a quorum with three members of the Board; however, the full Board is not sitting tonight. In order for any appeal to this Board to be approved, a unanimous decision of the Board this evening would be needed. If anyone would like to request a continuance, the Board would grant that until such time as there are more members sitting on the Board.

#### IV. APPROVAL OF THE AGENDA

There are no changes to the agenda.

**T. Morgan made a motion to accept the agenda as drafted. L. LaCourse seconded the motion, which passed by unanimous vote of the Board.**

T. Morgan spoke, adding his input to what T. Kinnon had said. It is difficult to need the unanimous approval of all members. It has a little bit deeper meaning than that. Each of the variance requests has several criteria set forth by the state statues and the State's Common Law through the Superior Courts, and in order for an application to pass you need a unanimous approval of every single one of those various criteria. An application could conceivably, this evening, fail if one member of the Board votes against any one of the criteria that are required for approval. He offers that as a word of caution because if he were in their seats (the applicants) it would make him very nervous.

T. Morgan made an appeal to anyone who might be interested in serving on the Board. After the election there will be a sufficient number of members to have a full Board, but there will not be any alternates. If somebody would be interested in serving as an alternate, it would be a real service to the Town of Alton to be able to have a full Board for people to appear before.

Mr. Sample asked for clarification of the criteria and what Mr. Morgan had meant. T. Morgan explained that for a variance there may be half a dozen criteria that the state requires and if one member voted against one aspect of one of those criteria, the entire application would fail. Mr. Sample asked if that was the worksheet; T. Morgan answered that it is.

T. Kinnon went on to explain that if a case were to be denied this evening, new evidence would have to be presented for an appeal to the Zoning Board. Simply the fact that there are only three members tonight would not be sufficient grounds for an appeal, if it is denied.

#### V. CONTINUANCES

<b>Case #Z09-12 Stephen and Raquel Rogers</b>	<b>Map 51, Lot 27</b>	<b>Area Variance/Special Exceptions 4 Saley Way</b>
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*Application submitted by Tom Varney of Varney Engineering on behalf of applicants Stephen and Raquel Rogers to request an Area Variance from Article 600 Section 601 to allow home to be set within the setbacks; additionally to request a Special Exception from Article 300 Section 320C to expand the existing footprint on both sides. This parcel is located in the Lakeshore Residential Zone. This case was continued from November, 2009.*

S. Penney read the case into the record. This case first came to the Board in June, 2009, and this has been continued, to this point, from November, 2009.

T. Varney asked for a continuance on this case, as there are only three sitting members and there are complications with this plan, which covers various dimensions. There was discussion concerning this continuance. Mr. Varney stated that he would be ready if the case is continued to April, 2010 meeting

**T. Morgan made a motion to grant the requested continuance, without prejudice, for Case #Z09-12 until the April 1, 2010 meeting. L. LaCourse seconded the motion, which passed by of vote of three in favor and no opposed.**

<b>Case #Z10-04 &amp; #Z10-05 Laurie Shea, Scott Mertens, and Susan Dolan</b>	<b>Map 36, Lot 51 (Formerly 0-3)</b>	<b>Variance/Special Exceptions 128 and 130 Mount Major Highway</b>
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*Application submitted by Tom Varney or Varney Engineering on behalf of applicants Laurie Shea, Scott Mertens, and Susan Dolan to request a Variance from Article 300 Section 327 Setbacks to allow the take down and rebuild of two (2) cottage within the 50 foot Shoreland setback as well as the 10 foot side setback. Additionally, the applicants request a Special Exception from Article 300 Section 320 (B) to raise the ridge line of the larger white cottage to make the building more structurally sound. This parcel is located in the Residential Commercial zone.*

S. Penney read the case into the record. T. Varney requested a continuance for this case, for the reasons given in the previous case.

**T. Morgan made a motion to grant a continuance for Case #Z10-04 and #Z10-05 until the April 1, 2010, without prejudice to the applicant. L. LaCourse seconded the motion which passed by a vote of three in favor and no opposed.**

S. Penney stated that this next case has two Special Exceptions due to special circumstances. It's the case of a retroactive Special Exception that should have been inclusive, or done first. She was unsure how to proceed, as the new application, which is a special exception, is for a room that was built prior to obtaining a Special Exception, in the same residence as the previous case.

T. Kinnon asked if Case #Z10-06 is actually contingent. S. Penney stated that 01 is somewhat contingent on 06; there has been a stop work order. T. Kinnon clarified that the continued case is contingent on the new one. S. Penney stated that is right, because it came out in the process that there was a porch put on this building which was outside the footprint. It should have had a Special Exception. That all occurred when they were without an interim Building Inspector, so it was kind of a mish-mash. She would recommend the new case first, because it holds up the continued one.

**T. Morgan made a motion to amend the agenda to accept Case #Z10-06 next in order and prior to #Z10-01. L. LaCourse seconded the motion, which passed with three votes in favor and no opposed.**

## VI. NEW APPLICATIONS

<b>Case #Z10-06 Lowell and Dorla Hall</b>	<b>Map 34, Lot 33-91</b>	<b>Special Exception 3 Verna Lane</b>
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*Application submitted by Roger Sample on behalf of applicants Lowell and Dorla Hall to request a Special Exception from Article 300 Section 320 A-4, B2-A, and C to include a screened porch. This parcel is located in the Alton Bay Christian Conference Center in the Residential zone.*

Mr. Roger Sample, agent for the Hall's, came to the table and introduced himself.

T. Kinnon asked if members of the Board had reviewed the application. He asked if there were any questions concerning the application.

T. Morgan had a question about some of the bounds and measurements. I didn't see any sketches that he thought were to scale to show the distance to abutting structures. S. Penney stated that there was only one dimensional setback shown and it is not certified. It is thirty-two feet and shows on one of the plot plans. S. Penney had gone to the site that afternoon because there were no photographs; she provided several photos to the Board for reference.

T. Morgan asked what the requirements are for an application for a Special Exception, in terms of the plot. S. Penney answered that they need something that is a little more fleshed out, dimensionally speaking. It's a little thin; she is hoping that Mr. Sample can provide some information. Since these two cases are a little convoluted, she thinks they should start at the beginning and give the Board the chronology of it.

T. Morgan asked what the precedent would be for allowing him (Mr. Sample) to do a presentation without having previously accepted the application, in hopes that he can fill it in. S. Penney recalled that they had done that before. T. Morgan stated that he would be more comfortable allowing him (Mr. Sample) to present and see if he can flesh it in rather than trying to accept it on the basis of what they have.

T. Kinnon clarified that T. Morgan's concerns are with the dimensions. Mr. Sample asked if it is the thirty-two feet that is in question. T. Morgan explained that that is the only dimension shown at all. He would like to see something that gives them a better feel for where everything is situated and what the distances actually are. T. Kinnon asked Mr. Sample if he had any more detailed plot plan. Mr. Sample explained that they have the large print that shows the whole Campground (the Alton Bay Christian Conference Center), but it is a 500 scale. He indicated another print that has been reduced and concluded that they would have to go with the large print, and then of course, on the large one they will not find the deck on it; it's a mathematical thing. They would have to use an engineer's scale then add the porch. When all is said and done, it's going to be thirty-two feet between the corner of that and the cottage. He has pictures of the area between the porch and the cottage (not submitted with his application – he took them earlier today after seeing the Planner's report). They will show the distance by eye; there is nothing that is going to show them that there is thirty-two feet there. He can tell them that there

are thirty-two feet, and if the Building Inspector goes out and measures it, he is going to find thirty-two feet.

**T. Morgan made a motion to allow Mr. Sample to present and then see if they think they have an acceptable application. All members are in agreement.**

Mr. Sample explained that he was not the contractor for the case involving the porch; he is the contractor for the next one, so he thought that if he was doing one Special Exception, he might as well do them both.

The addition did receive a building permit and it was not in an interim period; it is signed by Brian (Boyers). It was in the neighborhood of a bad time, but it was issued. The Hall's are not trying to slide on anything; they wanted a three-season porch, so they went and asked for a permit. They were issued a permit, and they hired Steve to construct it. There would be no problem at all, except Roger came along and he wanted another Special Exception, and that's when the Fire Department and the Building Inspector showed up. As soon as they said they wanted an addition, he knew that it needed a Special Exception because he has been down this route before. Steve Holmes didn't know it and the Hall's didn't know that they needed a Special Exception, so they just went on and put the porch on. They've put a lot of money into it, and the Campground has told them the glass has got to go and it has got remain a screened porch.

T. Kinnon asked Mr. Sample to clarify what the permit is for. Mr. Sample answered that the permit is for a 12 X 20 screened porch. T. Kinnon asked if the Special Exception, Case #Z10-06 is for the screened porch. S. Penney answered that it is; it is retroactive.

T. Kinnon voiced his concern that an official of the Town of Alton has already issued a Building Permit. At this point, he would like to get legal clarification as to whether or not this Board should make a determination after a Building Permit has already been issued. L. LaCourse asked if that is the case, even if they have a stop work order on it. T. Kinnon feels that something isn't sitting right with him, as far as that is concerned. The Town issued a Building Permit, and now they (the ZBA) are looking for a Special Exception for something a permit has already been issued for. It should be the other way around.

L. LaCourse stated that the building permit was for a screened porch, and it was built as a four-season porch. Mr. Sample stated that this room is not insulated and it has no electricity and no heat. T. Kinnon clarified that the Special Exception is for a screened porch, not a four-season porch. Mr. Sample stated that he has heard of a three-season porch, but never a four-season porch. You can use it in late fall and early spring, but once winter hits, you're back in the house. Additionally, this home isn't even used in the winter.

T. Morgan stated that he thinks T. Kinnon's point is well taken. He is not suggesting this is the outcome, but if for some reason this Board didn't accept this application, or didn't approve the application, they would have a conflict between Town authorities. T. Kinnon agreed that this is the issue. T. Morgan went on to say that it might be a good idea to get input from counsel. It may be that the application is not necessary. T. Kinnon agreed that this is his feeling also, that because the permit has already been issued, they don't need a Special Exception. Whether or not the Building Permit was issued in error, and by a previous Building Inspector; this is why he is

saying this is more complicated than something for them to look into at this meeting. T. Morgan agreed.

T. Kinnon apologized to Mr. Sample, saying that he realizes Mr. Sample has been here before. His intent is not to continue, but to have a process that is as fair as possible to everybody in town. For a Building Permit to be issued, and then for the Town to turn around and say that permission was given but is now being taken away, and they have to jump through hoops to get permission back again, is not fair.

T. Morgan stated that he would not be surprised if Town Counsel found that they are grandfathered and they don't have to go through this process; he definitely thinks counsel should be consulted.

Mr. Sample brought the conversation back to the other case, stating that it hinges on this case and is at the end of its continuation because they were waiting for the results of this one. S. Penney stated that there were also septic issues with that one. Mr. Sample pointed out that it could be approved, contingent to the septic being approved, as they did at the last meeting for the Rosario's. They are working on it; he is working with John and they have all of the seventy houses noted on a plan, counting the 180 bedrooms and everything. It is in process, and no permit is going to be issued until that is satisfied. This Board is not necessarily a code board; they would make their judgment contingent on that approval. John is not going to issue a permit until that's satisfied. T. Kinnon stated that they have done that in the past, for several different cases.

T. Kinnon asked if the layout of the structure is such that the study comes off the porch. Mr. Sample explained that there is nothing there now. The photos were used to show the location of the screened porch; the other addition is in another location. The only rendition of the screened porch was hand drawn by the Fire Chief. T. Kinnon asked if Case #Z10-01 is for the 8 X 12 addition. S. Penney said it is not. It is for a study and half-bath on the second floor. There are no additional bedrooms; it will expand a bedroom on the second floor and put a study on the first floor, which is an expansion of the footprint. The whole thing started because he came for a Special Exception to put the study and second floor room in, and that is what brought the Building Inspector down there. Sharon gave him the notes from his application to go out and inspect it for whatever needs it might have, and that's when they found the screened porch. Steve Holmes was constructing that when they showed up there. It has nothing to do with this.

T. Kinnon asked if the study and half-bath addition he wanted to do was attached to the screened porch in some way. Mr. Sample said it was not. T. Kinnon then asked why the addition was contingent on the screened porch. Mr. Sample answered that it is because of the stop-work order. The Board felt uncomfortable approving one thing when there is something here that is stopped. He was given the opportunity to forge ahead, but he was cautious and sat back and hoped that things would straighten themselves out in the interim. Some of them have. T. Kinnon asked if it is really a matter of the stop-work order, more than anything else. Mr. Sample answered that in the first case, it is.

T. Kinnon stated that they really do need to get the Building Permit issue resolved. T. Morgan reiterated that he would be much more comfortable with advice of counsel before going any further on this. T. Kinnon asked about getting together with Attorney Sessler on this issue.

**T. Morgan made a motion continue these matters until they can get the opinion of Town Counsel with regard to the status of this whole thing.**

He is uncomfortable with doing something that denies the applicant's rights, and he is uncomfortable that they might be getting the Town into a mess. T. Kinnon agreed. L. LaCourse also agreed, saying that he would hate to be making a decision with not as much information as they should have, and set a precedent that they will not be happy with later.

**L. LaCourse seconded T. Morgan's motion above. Motion passed with three votes in favor and no opposed.**

Both cases (#Z10-01 and #Z10-06) are to be continued without prejudice. Mr. Sample thinks that after consulting the attorney, it will make decisions easier. He was puzzled over this as well; they had a building permit and the thing is already done. He thinks the attorney will feel the same way, and make things easier for everybody.

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

Continued without prejudice; see above. T. Kinnon asked if, in the interim, he could possibly provide more dimensions. Mr. Sample said he would. This matter is rescheduled for the April 1, 2010 meeting.

<b>Case #Z10-07 &amp; 08 Joanne Doyle</b>	<b>Map 36, Lot 46</b>	<b>Special Exception and Area Variance 141 Mount Major Highway</b>
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*Application submitted by Tom Varney of Varney Engineering on behalf of applicant Joanne Doyle to request a Special Exception from Article 300 Section 320B to request expansion of a non-conforming structure by removing the piers and replacing with a full basement foundation. Additionally the Doyle's are requesting an Area Variance from Article 300 Section 327 to allow the demolition and rebuild of same cottage within the 10 foot setback. The cottage is presently two (2) feet from the property line. This parcel is located in the Residential Commercial zone.*

S. Penney read the case into the record.

T. Varney came to the table to present this case. The property is on Route 11 between Little Bay Bridge and Sandy Point, on the opposite side from the lake. There are two buildings on this property; both are seasonal. The plan is to tear down the back cottage because the doors don't

close and the floor settles and so forth. He has pictures in the application to show the cement blocks and piers that hold up the building. He would like to demolish that and put a full foundation underneath it.

T. Kinnon apologized, saying that the application would have to be approved. He asked the Board members if they felt there was adequate information in the application. T. Morgan mentioned that there is a waiver request. S. Penney stated that it is only in the checklist; there is no letter for a waiver. T. Morgan said it was on one checklist but not the other. There was request for waiver of three items; there was a Survey Accuracy Waiver request, a Certification of Survey Waiver request, and a Meets and Bounds Waiver request. He does not recall having seen any supporting documentation for those waiver requests. T. Varney stated that he does not believe they submitted a letter; he apologized, saying that they had just missed out on that.

T. Kinnon asked for clarification of what the waivers were for. Mr. Varney explained that you need a land surveyor to survey the property; that's what the checklist asks for. T. Kinnon stated that he knows they have granted this for him in the past; it's not anything about him, it is just the letter is absent.

T. Morgan feels that one of the concerns is that a lot of this has to do with setbacks and where they are exactly on the property, and where the septic is and that sort of thing. He is not that comfortable with just granting the waivers. He understands that they have a very well done engineering drawing, but they're real close to a lot of meets and bounds. It's close to DES, close to the road, close to neighbors, close to boundaries, and there are septic issues. That is the concern he has with the waivers. T. Kinnon said he knows they have granted the waivers in the past; he believes it is a state regulation. S. Penney stated that it should be certified, even if it's extrapolated from a survey. T. Kinnon said that he knows Mr. Varney's engineering certification; they have had this in the past, with Mr. Varney in particular. The engineering stamp as opposed to a surveyor stamp – he personally is very comfortable with the accuracy of Mr. Varney's work. The only difference is that they did not get a letter detailing why the request is being made.

T. Morgan stated that he is just uncomfortable with accepting the application without some further justification for granting the waivers.

**T. Morgan made a motion that the Board decline to accept the application as complete. L. LaCourse seconded the motion. The motion passed with two votes in favor (TM and LL) and one opposed (TK).**

T. Morgan suggested that they continue the matter until the next meeting to give Mr. Varney time to find a survey he can tie his engineering drawings to, and to get a letter. He asked Mr. Varney if he had a copy of the Planner's review on this; he suggested that Mr. Varney be given a copy. There are a couple of things on there he could possibly address at the next presentation, which would make this go much more smoothly.

This case is continued to the April 1, 2010 meeting.



## **VII. NEW BUSINESS**

Members have received copies of the Delineation Committee handouts. This is part of the homework they talked about at the end of the last meeting; the Planning Board has formed a Delineation Committee, and the last paragraph of the minutes of the last meeting detail what they would like the ZBA to do.

## **VIII. APPROVAL OF MINUTES**

February 4, 2010

Page 4 of 12, in paragraph numbered “5”, fifth line down, reads “hardy blank” and should read “hardy plank”.

Same paragraph where it reads “then the building code was a septic system issue” should be “then the building code officer had a septic system issue”.

Same page, fourth paragraph that starts with P. Monziona, the last sentence says “it would be nice to have a general statement that is fine” should be it would be nice to have a general statement addressing the location, distance, and actual capacity would be fine.

Same paragraph, about halfway through, it says “he read the code enforcement concerns”. The next “he understands” should be “Mr. Smith understands.”

Page 5, third line down, where it says “P. Monziona stated he was at the last” should be “P. Monziona stated he was at the last meeting.”

Page 7, next to last paragraph beginning S. Penney, “Conservation Commission is still waiting or...” should be Conservation Commission is still waiting for...”

Also on page 7, the big paragraph in the middle of the page beginning Richard Smith, the end of the third line down, “before the” should be “before they”

Page 8, sentence beginning with “Structure” just above where it says T. Morgan, the word “ad” should be “as.” The next line down that begins with T. Morgan, “there” should be “their.”

Page 9, second line up from the bottom, sentence begins “DES stated ...where required,” “where” should be “were.”

Page 11, under Other Business, paragraph beginning “One” “zone” should be “zone”

**T. Morgan made a motion to approve the minutes of February 4, 2010 as amended. L. LaCourse seconded the motion, which passed with three votes in favor and no opposed.**

**IX. CORRESPONDENCE**

The Spring Planning and Zoning Conference is May 8, 2010 in Nashua. This is the OEP one, not the LGC. OEP sponsors the normal one for Planning Boards. The other one they had a reminder for was the New Hampshire Planners Association. The LGC one is done through the week; the one on May 8 is on a Saturday. If members want to go, they should let Stacey know.

**IX. ADJOURNMENT**

**T. Morgan made a motion to adjourn; seconded by T. Kinnon and passed with three votes in favor and no opposed.**

Meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session