

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
Public Meeting
April 1, 2010**

I. CALL TO ORDER

The meeting was called to order at 7:16 p.m. by Paul Monzione. He stated for the record that there had been a Town Hall meeting with Carol Shea-Porter in this room, so this Board is getting a bit of a late start. He went on to state that there are a number of cases on the agenda tonight; there is also a 10:00 p.m. rule which means that after 10:00 p.m., they do not entertain a new case. They will try to get to everyone by 10:00 p.m., if that time is required.

II. INTRODUCTION OF PLANNING DEPARTMENT AND BOARD MEMBERS

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

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

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

III. APPOINTMENT OF ALTERNATES

There are none needed, as there are four sitting members present tonight. Additionally, there are no alternates to appoint.

IV. STATEMENT OF APPEAL PROCESS

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

V. APPROVAL OF THE AGENDA

The principals for Case Z10-04 and Z10-05 have opted for a continuance until next month.

T. Morgan asked where this case is in regard to continuances. S. Penney answered that they are within the notice parameters.

T. Morgan made a motion to accept the request for a continuance in Case Z10-04 and Z10-05. S. Miller seconded the motion, which passed by unanimous vote of the Board.

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

VI. CONTINUANCES

Case Z09-12 Stephen and Raquel Rogers	Map 51, Lot 27	Area Variance/Special Exceptions 4 Saley Way
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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.

As he has always done in the past whenever this case has come up, Paul Monziona recused himself due to his relationship with the applicant as previously detailed in the record. He appointed T. Morgan as acting chair, which T. Morgan accepted.

S. Penney read the case into the record.

Tom Varney of Varney Engineering stated that they would rather not have this case heard tonight as there are only three members. T. Morgan stated that they would make it his option as to whether he wanted to proceed; if he does not they can continue the case to the next month's agenda. T. Morgan pointed out that there is an addendum to the Planner's Report filed with a date of March 31, 2010; he asked Mr. Varney if he has a copy of that addendum. S. Penney answered that he does not; this is an update to the original Planner's Report which was done in June of 2009. T. Morgan suggested to Mr. Varney that he and his clients may want to review that addendum. S. Penney explained that the addendum reflects some of the information submitted in February.

T. Morgan made a motion to grant the requested continuance for Case #Z09-12 with the caveat that they would review the number of continuances to see how many of them have been caused by a lack of adequate quorum. L. LaCourse seconded the motion, which passed by of vote of three in favor and no opposed.

P. Monziona resumed his seat on the Board. He stated for the record that Tim Kinnon, the absent member this evening works for an electric company; with the flooding and horrible rainstorms we have been having, he's out in a truck somewhere working on wires. That is why the Board is shy one member; Mr. Kinnon is usually present at meetings, but given the weather he was unable to attend tonight.

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

S. Penney reminded the Board that at the last meeting it was decided to do these two related cases in reverse of how they appear on the agenda because this case is a subsequent-needed Special Exception. The Board at that time had also instructed her to speak to Attorney Sessler to see if there was a need for a Special Exception. The two cases are inter-related. P. Monziona stated that in order to keep from revising the agenda, they would hear the two cases together and if the order is reversed, that would be fine, as they are related cases by the same applicant.

Roger Sample, agent for the Halls, introduced himself.

S. Penney read the case into the record. At the March 4 meeting there was discussion on this particular Special Exception which came about as somewhat of a retroactive Special Exception because there was a screened porch built which should have had a Special Exception in place but it didn't happen. There was a different set of personnel and different circumstances. T. Morgan had said that he would be more comfortable with the advice of counsel (read from the minutes of the March 4, 2010 meeting) and asked about getting together with Attorney Sessler. There was a motion to do this, which was passed with none opposed. S. Penney spoke with Attorney Sessler and e-mailed P. Monziona with the details of that conversation.

In Attorney Sessler's opinion, he felt that it was "a cleaner methodology to go through on the Special Exception fully realizing that this has put the applicant a little bit in harms way because the former Building Inspector perhaps did not follow the protocols that should have been followed." He said that the applicant, in his opinion would still be able to keep the deck were they to deny it, on the basis of municipal estoppels. She paraphrased, saying that Mr. Sample should go ahead with the Special Exception, and he hopes that the Board is very open-minded. P. Monziona thanked her for her comments and invited Mr. Sample to proceed.

Mr. Sample stated that he is sure the Board will not have a problem with the deck as it poses no real grievance to the neighborhood or any safety matters. He feels that they should just move forward. It's already built; they were issued the permit and it was not until the applicants were going to do the addition on the house that they (the Interim Building Inspector and the Planning Department) realized the deck was there because they came to see the house. Otherwise, it would have been a done deal. They weren't trying to sneak it by; they came in and applied for the permit and were issued one.

P. Monziona stated that he had been wondering how it was showing as already constructed because usually this process proceeds the permit and the construction. He went on to say that he is glad they had the advice of Town Counsel on this particular issue. They are going to go through the case regardless of the fact that it is already constructed and apply the criteria as they have to.

L. LaCourse stated that when the Board had initially reviewed this case, the porch had combination windows rather than screens and it had been wrapped in Tyvek. He asked if the combination windows have been removed. Mr. Sample stated that they have; the bottom half of the porch is enclosed. Also, it is not Tyvek, but a weather board. It has not been sided. T. Morgan stated that it is more of a structure than a screened porch. Mr. Sample feels this is a matter of words; it is not heated, there is no insulation; it's an outside porch, not a living area. They chose to call it a screened porch when they applied for the application because that is what they were thinking. It does have screens. That has created a gray area; he feels that they should be able to leave the windows in it. Come winter time that's great protection for the inside. Even the campground (the Alton Bay Christian Conference Center) told them they had to remove the windows because they applied for a screened porch. Board members reviewed photos of the screened porch.

P. Monziona asked if there would be any appliances or anything like that; Mr. Sample said there would not be. P. Monziona clarified that there would be no vertical expansion; Mr. Sample said there would not.

P. Monziona invited public input on this case, both in favor and in opposition. There was none.

P. Monziona asked the applicant if there was anything else he would like to add. There was not.

P. Monziona asked for a motion to accept the application as complete. This application was accepted as complete at the last meeting.

WORKSHEET – SPECIAL EXCEPTION

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

2 - P. Monziona stated that the specific site **is** an appropriate location for the use. Based on the photos, it is obvious that it is to be used as a porch and will not affect the use of the structure. This is an appropriate location for the use. L. LaCourse agreed, but only because it is already existing. S. Miller agreed. T. Morgan agreed with Lou stating that he is not sure he would have agreed if this had come before them, but they are stopped from doing much of anything about it at this point. He is going to recommend that at the end of this they make some requirements as part of the acceptance.

3 - L. LaCourse stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. S. Miller agreed. T. Morgan said that no evidence has been presented with regard to property value at all. P. Monziona agreed as well.

4 - S. Miller stated that there **is no** valid objection from abutters based on demonstrable fact. T. Morgan agreed, stating that there is no input from abutters. P. Monziona agreed that there is no abutter input in the record. S. Miller agreed also.

5 - T. Morgan stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking; there is no impact on either vehicular or pedestrian traffic at all. P. Monziona agreed, stating that it is his understanding from the application that this porch does not in any way impact vehicular or pedestrian traffic. L. LaCourse agreed. S. Miller agreed.

6 - P. Monziona stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. There isn't any need for facilities or utilities. The representation and the application restrict this structure to the use as a described "screened porch." L. LaCourse agreed. S. Miller asked the applicant if there is going to be a 220 line out to the porch. Mr. Sample said there is not. Mr. Miller asked if there is going to be a 110 line; Mr. Sample said there might be. Mr. Miller asked if there is going to be cable. Mr. Sample said probably not, as this is a porch. Mr. Miller agreed. T. Morgan agreed.

7 - L. LaCourse stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. This is just like number six; it really doesn't apply for a porch. S. Miller agreed. P. Monziona agreed also.

S. Miller is going to abstain from item 8 as he has not yet had a chance to read the Master Plan.

8 - T. Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan, as long as the porch is not further enclosed, and there are no windows, and as long as there is no further expansion without coming before this Board for a Special Exception to make any changes. P. Monziona agreed with that and with all the reasoning. L. LaCourse also agreed with T. Morgan's thoughts.

P. Monziona stated that there is one abstention on one of the criteria, but there are three in favor so that is sufficient to carry it. He asked for a motion on Application Z10-06.

T. Morgan made a motion for the Board to approve Case Z10-06 with the requirement that there be no further close-up of the structure, that there are to be no windows put in it, and that there will be no expansion of it without coming before this Board for Special Exception, and that it will not be insulated in the future. L. LaCourse seconded the motion.

P. Monziona invited further discussion. He stated that with regard to the insulation aspect of the motion, "without further expansion" as one of the specific conditions covers all of that. He is glad insulation was mentioned, but it is even broader than that in terms of the condition of expansion.

The motion carried by a vote of three in favor. S. Miller abstained from this vote. The application for Special Exception for Case Z10-06 is granted.

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

P. Monziona asked if this application has been accepted as complete; it has not. The application was reviewed by the members. T. Morgan stated that he has a boundary plan of the Alton Bay Christian Conference Center and some drawings, and the overall application. He asked if there was anything missing; he doesn't see anything that shows how close they are to abutting properties. T. Morgan continued through his packet and found what he had been looking for on the last page.

S. Penney stated that the Building Inspector can speak to this; there are unknown septic issues and no septic plan in place. There is a letter from the Building Inspector dated February 3, 2010. Copies were made and given to the members. P. Monziona informed the applicant that this goes to whether the application should be accepted as complete, meaning that they have enough to go through the criteria and make the decision. P. Monziona asked the applicant if he has seen the letter from the Code Enforcement Officer; he answered that he has not, but he and the Code Enforcement Officer have been working closely together to get the septic issues resolved. He said that it does have a septic system. The applicant was given a copy of the above referenced letter.

S. Penney stated that she may stand corrected on the completeness of the application. P. Monziona stated that it may be an issue they have to address as they get into the case, but for purposes of the application, and given what they have before them that has been submitted, he asked for a motion concerning the completeness of the application.

T. Morgan made a motion to accept application Z10-01 as complete. L. LaCourse seconded the motion, which passed without opposition.

The application has been accepted as complete.

Mr. Sample stated that the applicants would like to expand on what is now a very small cabin. Pictures were passed from the applicant to the members. Mr. Sample stated that there are actually two small additions they will be doing. One is an addition to a bedroom, and the other is a game room on the first floor. Only one of them expands the footprint. P. Monziona asked if this is also already constructed. He referred to the photos. Mr. Sample said it has not already been constructed; the photos are showing the porch.

P. Monziona asked the applicant if there is anything else he would like to add. Mr. Sample stated that on the other one, he had been a little puzzled at #3 because some members said that they wouldn't have approved this if they had come for the approval before the project. He didn't think he was supposed to speak at that time; otherwise he would have because he doesn't understand what was in that that would have made that particular project...

P. Monziona stated that he thinks the comment was that the Board member wasn't sure the approval would have been granted if not for the legal issue that Town Counsel pointed out which is municipal estoppels, which means that once the permit has been issued and the structure has been built that poses different questions and issues. They went through the criteria on that, and he met them. He thinks now, being on the next case for Special Exception, they should keep with that rather than going back to the prior issue.

Mr. Sample stated that they are the same issues here; there's plenty of room for expansion, there are no houses too close by; it's still a question of the septic system. The project can clear this board and get stopped at the next one; that's part of the process as well. The septic system doesn't have to be amended for this part of the process; it just has to be amended for the construction approval.

P. Monziona stated that they are trying to take a non-conforming structure and make it more non-conforming by expanding it even more; they are applying under Section 320 A-4 and 320 B-2A and C, so they will look at those and see what is required.

Mr. Sample argued that he would not say they are taking a non-conforming structure and making in more non-conforming. He's not helping it out, perhaps, but they are not making it more non-conforming.

P. Monziona asked Mr. Sample about an entry on his application. It reads, "By means of a Special Exception, we wish to expand the footprint 12' X 8'". Mr. Sample explained that would be the addition on the first floor. Copies of the more recent floor plan were passed to members. P. Monziona stated that he had questions about where the addition was specifically located on the structure and how far it is expanding. Mr. Sample stated it is kitty-corner from the porch. P. Monziona asked if the drawing they have been given has that (the porch) on it. S. Penney stated that the porch is on the north side; there is only one document that shows the porch drawn in by Ed Constantino. There is not one comprehensive schematic here; they are dealing with a couple of pieces that show parts of the same information. She suggested that if they look at the document that says "First Floor – Top View Proposed New Space on First Floor", on the north side is the porch that has already been built and reflected in the application they have already dealt with. Everything else is the first floor. The second floor proposed expansion is shown on a separate drawing.

P. Monziona asked what the first floor expansion is; it is a 12' X 8' computer game room. Mr. Sample answered that it is actually going to extend a little bit further because they are going to square off that corner of the house. P. Monziona clarified that it is going to expand the footprint for the whole 12' X 8' section. Mr. Sample agreed that it would.

S. Miller asked if there were any constraints the last time a variance was requested on this particular property. Mr. Sample answered that this isn't a variance; the only other special exception on the property is the deck they have already spoken about. S. Miller asked if there had been any restriction to further expansion in any previous variance requested. Mr. Sample said he was not aware of any.

L. LaCourse asked if requests for variance and for special exception both had to go through the hardship clause. S. Ames answered that only the variance does. He asked what the difference is between a special exception and a variance. S. Ames answered that a special exception is allowing them to do something that is beyond the parameters of what is already allowed, and a variance gives you the opportunity to use a parcel of land in a way other than its intended use. P. Monziona added that the simple answer to that is that when they go through the worksheets, the criteria are specific and are provided for in the regs.

T. Morgan asked what type of siding will be on the addition. Mr. Sample answered that even though it is not within twenty feet of another structure, they will put hardy plank on it. T. Morgan asked if that will also be true on the portion of the porch to be sided. Mr. Sample answered that anything they side will be the hardy plank; anything they add on and anything they go over will be done in the hardy plank. They are adding on to the second floor over the kitchen; they will re-do the siding on that wall so they don't have a different siding starting halfway up the wall. The west side and the north side will be completely done with hardy plank.

T. Morgan asked about the septic; Mr. Sample stated that it has not been totally addressed. T. Morgan asked Mr. Sample if he was aware that one of the criteria they would have to vote on is whether there is adequate septic. Mr. Sample answered that there is adequate septic, but they are not adding bedrooms. S. Ames stated that they are adding living space. Mr. Sample commented that the regs state that if you are going to expand the ridge, you have to have the system at least looked; amended or proven to be good. L. LaCourse referred to the letter from the Code Enforcement Officer which states that there is no documented connection. Mr. Sample said that there is, and invited the Building Inspector to comment on that. P. Monziona stated that whenever a public official, such as the Code Enforcement Officer, gives input, it is other than public input; he invited Mr. Devers to address this issue.

Mr. Devers stated that the septic issue regarding the DES's rule is that when you are expanding your living space, and that includes raising the ridge line, expanding out, taking space that was not previously living space (such as taking a porch and turning it into part of the house) that triggers a review of the existing system. If there is not an existing system there has to be a design implemented and provided for review so that there is a design on file if the present system fails. He and Mr. Sample have worked together; Mr. Sample has provided him quite a bit of information. They have gone back with Jones and Beech, who were the original engineers of the system that this cabin is part of. There are 75 cabins on that particular system, which was installed in 1990 – Jones and Beech have presented it to the state for review. That's where they are with that.

L. LaCourse referred again to the memo from the Code Enforcement Officer. Mr. Sample stated that he thinks the issue is the date of the memo. At the time of its writing, it was correct. Mr. Devers agreed; he wrote the memo back in February. At that time they did not have a count of how many bedrooms are on the system. Now they know how many cottages are attached to that system and how many bedrooms are on that system. At that point, they could have the engineers go forward to DES to show them what is there now. L. LaCourse stated that what he had read indicates that they were unable to establish the septic connection point. Mr. Dever stated that they have since been able to verify that he is tied to that system. Now they know what is tied to

that system. T. Morgan pointed out that they still don't know the adequacy of that system; Mr. Devers agreed that they do not know whether DES finds it adequate at this time. T. Morgan stated that one of the criteria they have to determine this evening is whether there is adequate septic. Mr. Devers stated that DES has not come back and said yea or nay yet.

P. Monziona stated for the record that he understands that the system may be determined to be completely adequate and fine; however the activity they are engaged in there triggers a review under the laws of the Department of Environmental Services because they have expanded the living space, and perhaps even the ridge. Obviously, under the law, because they have expanded the living space, the state wants to assure that the septic is adequate. As T. Morgan has pointed out, that is also a criterion for this Board to consider. At this point, it is an unanswered question. It may fully be that they will come back and the state will give its blessing and everything will be fine, but as of now, that is an open issue.

Mr. Sample stated that he does know that the Board has granted special exceptions with the contingency that they do meet those septic rules. That is more for the building department; obviously they go nowhere if they are not going to issue a permit until that has been met. They are in their third or fourth month with this case and this is it for this application because this is the second continuation. This is mostly so the sister cases could be heard together. On one of the ones they continued, the Rosario property, the special exception was granted by this Board contingent on the septic plan being accepted. They were adding a bedroom; this case is just adding a little space so they can get away from the grandkids. As far as the septic is concerned, he does not feel that should be a problem for them here tonight.

Mr. Devers stated that he does not think that special exception for the Rosario's was granted; it was in the same situation as this. S. Penney stated that she would have to check the record. Mr. Devers stated that they (the Rosario's) are being allowed to do electrical repairs, but they are not allowed to do any expansion at this point. P. Monziona stated that he understands; they could go through the criteria and perhaps make an approval conditional on them fulfilling the septic requirements of the state. He does not recall that they did that on the other case. That's something they should find either exists or doesn't exist at the time. He doesn't know, as they go through the criteria that they have the right to say they can put that criteria on hold and grant a variance even if they don't know if the criteria has been met. Mr. Sample suggested that they should look at it when they ask the question of whether this project is going to put undue charge on the septic system, they can say no it won't, because unless the septic system is adequate, the project won't happen. For that question, the answer is simple. You have to look ahead on it a little bit; you can't guess on it now. This project will be no burden on the septic system.

P. Monziona stated that the problem is that once a Special Exception has been granted it's essentially in place. He understands that it is conditional. He understands Mr. Sample's position and what he is requesting. He asked if there was anything further to add to the presentation. Mr. Sample answered that there is nothing more on the first floor; they have yet to discuss the second floor. P. Monziona asked Mr. Devers if he had anything further to add; Mr. Devers said he did not. They are just waiting for answers from the state.

S. Miller asked Mr. Devers if adding a porch on a seasonal cottage triggers a septic review. Mr. Devers answered that it does not.

S. Penney stated that S. Ames had gone to get the Rosario file; she remembers that it was convoluted. P. Monziona agreed and said that he does not remember the decision that was made on that.

Discussion moved on to the second floor expansion. Mr. Sample stated that they would be expanding within the footprint on the second floor; they will be adding a bathroom and adding to a bedroom. S. Penney asked if they had the schematic; it is over the existing footprint. Mr. Sample used the drawings to show where the second floor expansion will be. It is over the 8 1/2' X 12' kitchen, the 5' X 5 1/2' bathroom, and the 5' X 5 1/2' back entrance on the first floor. L. LaCourse asked if the second floor would have an overhang; Mr. Sample again referred to the plans to show that there would be no overhang, and to show the configuration of the expansion on the second floor.

P. Monziona reiterated that the second floor expansion would be over the first floor kitchen, bathroom and back entrance, and would include a bathroom and an expansion of a present bedroom, and that it will stay within the current ridgeline. He asked if there is a second floor on any other part of this building. Mr. Sample answered that there is an existing second floor; the ridge will get continued out. There will be a shed dormer on the back.

P. Monziona asked what the total amount of square footage is that is being added to the structure. Mr. Sample answered that they are expanding the footprint by 96 square feet, and upstairs they are adding 144 1/2 square feet. T. Morgan asked Mr. Sample if he knew what the total square footage of the structure is, without the additions. Mr. Sample answered that he did not know. P. Monziona asked if they are doubling the square footage of the building; Mr. Sample said no. S. Penney stated that she had found dimensions before; there will be an additional 240 square feet.

P. Monziona asked Mr. Sample if there was anything else he would like to add. L. LaCourse asked about the 20 1/2 foot height; Mr. Sample stated that is from the ridge line to the ground.

P. Monziona verified with Mr. Sample that this application is under Section 320 A4, expansion of the use. He read that section from the regs. 320 B2 (a) and (c) are also stated in the application. P. Monziona asked where the building is located within the setbacks. Mr. Sample stated that there are no buildings in the direction of the addition, and they are staying well within the property lines.

P. Monziona invited public input, both in favor and in opposition. Hearing none, public input was closed.

The Rosario information was obtained, which shows that it was granted specifically on Code Enforcement's approval for septic loading before they could go forward.

This is just a 320 B2(c), which states "do not grant unless it finds that the proposed expansion will not have an adverse impact on abutters or other property owners who are located within 500

feet of the subject property. Any expansion of the use, such as number of bedrooms will be accommodated by water supply and sewage disposal, approved by the NHDES Water Supply and Pollution Control Division.”

WORKSHEET – SPECIAL EXCEPTION

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

2 – L. LaCourse stated that the specific site **is** an appropriate location for the use. Considering what he is seeing from the size of the lot, there are no issues with the size of the building versus the size of the lot. S. Miller and T. Morgan agreed. P. Monziona agreed, stating that the use is not changing; it’s all still living space.

3 – S. Miller stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. T. Morgan agreed, stating that no evidence had been presented with regard to property values. P. Monziona also agreed, stating that this is an improvement to the structure. L. LaCourse agreed on the same basis.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact; there have been no presentations from abutters. All members agreed.

5 – P. Monziona stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. There is no impact on either vehicular or pedestrian traffic at all due to the construction of this addition. All members agreed.

6 – L. LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure with the caveat that any questions regarding the septic system are cleared up. S. Miller and T. Morgan agreed. P. Monziona agreed provided that DES ultimately approved the septic.

7 – S. Miller stated that there **is** adequate area for safe and sanitary sewage disposal and water supply with the caveat that DES provides authority to operate the septic system. T. Morgan agreed and stated that they should use the same caveat here that they used in the Rosario case. P. Monziona agreed, as long as there is an appropriate approval by DES and the Code Enforcement Officer.

T. Morgan stated that this is the one that gives him the most pause; he is concerned about the fact that this is already a non-conforming structure and the percentage of non-conformity is going to increase by more than 25% with the expansion of the footprint.

8 – T. Morgan stated that the proposed use or structure **is not** consistent with the spirit of the ordinance and the intent of the Master Plan. P. Monziona stated that he understands that as well in terms of expanding the structure itself, but the proposed use is not changing. He understands it is quite a big expansion, but given its location on the lot and the area of it he will find that the

proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. L. LaCourse stated that he is a little torn, but he believes that it **is** consistent with the spirit of the ordinance and the intent of the Master Plan because even though it is non-conforming, the lot is fairly large. If the buildings were a little closer, he would probably say the opposite. S. Miller abstained because he has not yet read the Master Plan.

P. Monziona stated that the Board has one abstention, one against, and two in favor of criteria #8. Therefore, there are not at least three agreements on all of the criteria as necessary. That is determinative of whether a motion to approve can be granted. Because of the one no vote, they can not entertain a motion to approve the application for Special Exception. Instead they need to make a motion that the application be denied. Mr. Sample started to speak; Mr. Monziona reminded him that they are not in public input at this time. S. Miller asked a point of order question; if he has an opportunity to review the Master Plan and vote yea or nay at that time, would it be possible to vote on this at a different time. P. Monziona suggested that they should get a motion on the table and get it seconded; during discussion he could raise that point.

T. Morgan made a motion to continue the matter to give Mr. Miller an opportunity to review the materials he needs to review. L. LaCourse seconded the motion.

P. Monziona stated for the record that he is glad Mr. Miller has stated he needs to review the Master Plan; it is appropriate that he does review it and that the applicant should have the opportunity to have the Board members have that information before making the decision.

The motion to continue this case to give S. Miller a chance to read the Master Plan is granted by unanimous vote.

This case is continued to the meeting on May 6, 2010. The only thing this case would be on the agenda for at that meeting would be for S. Miller to cast a vote on criteria #8; the rest has already been dealt with and the votes have been determined.

A short recess was taken at this time.

Case Z10-07 and 08 Joanne Doyle	Map 36, Lot 46	Special Exception and Area Variance 141 Mount Major Highway
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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.

Tom Varney of Varney Engineering presented the case. The application has not been accepted.

T. Morgan asked why they did not accept it. Mr. Varney stated that they had not asked for waivers, so he had been encouraged to come back this month. Since the last meeting, he has had the land surveyed and obtained a Shoreland Permit. There are now no waivers being asked for. P. Monziona asked if he had submitted the full plan; Mr. Varney said he has.

P. Monziona asked if the members have had a chance to review the application. T. Morgan asked if they had a copy of the survey. Copies of the survey had been dropped off at the Planning Department earlier in the day; S. Penney handed them out to the members. The survey is part of the application. Mr. Varney has included the survey, a tweaked copy of the zoning plan, the Shoreland permit, and the septic design approval, all of which he had dropped off earlier in the day. P. Monziona stated that this is an application for both a variance and a special exception.

T. Morgan made a motion to accept the application for Case Z10-07 and 08 as complete. S. Miller seconded the motion, which passed by unanimous vote of the Board.

Mr. Varney stated that this property, owned by Joanne Doyle, is located between Sandy Point and Little Bay Bridge. From the bridge going toward the restaurant, Sandy Point is on the left and the property is four cottages beyond the bridge. There are two buildings on the property that they use as summer cottages only. The proposal is to take the back cottage and put a foundation underneath it. It is sitting on cement blocks and piers now. It is unstable and the doors don't close in the spring.

They are asking for a Variance because they are within ten feet of the property line. They are also within 25 feet of Spring Street. They are asking for a Special Exception because they are going to tear the cottage down and build it up again. They are within 250 feet of the lake, so they come under the Shoreland rules. They have submitted a Shoreland application. They have incorporated some storm water measures.

The building is not going to be expanded; it is going to be adjusted with a new foundation, and it is not going to be raised. Under the septic rules, the controlling rules in this project, you can't raise the ridge or the sill, and you can't expand the building because this is non-conforming. It is two buildings on one lot. The lot can't support the sewerage on the lot, so they are in a non-conforming category. The only thing they can do is stabilize the building. The Shoreland permit has no expansion on the building, only instituting storm water controls. The septic design was to bring it up where there is no state approved septic, so they have a septic system going to both buildings.

They meet all the requirements for the variance. There are no major changes, no impact to the abutters, and not a whole lot is going to change.

P. Monziona stated that in one application he has both a request for a Special Exception and a Variance. All the same information applies to both applications. On the variance he is citing Section 327, which is a setback. P. Monziona asked what the specific setback variance is that he is seeking. Mr. Varney explained that on the sideline, where they are supposed to have ten feet they are only two feet away from the property line. They are supposed to be twenty-five feet

from the road, and they are only about fifteen feet away from the road. P. Monziona asked if that is true of the current structure as it sits right now; Mr. Varney said it is. P. Monziona clarified that because they are tearing the structure down and relocating it exactly where it is, they need the variance. It is non-conforming because of that; he asked if there is any other reason it is non-conforming. Mr. Varney answered that there are two buildings on one property; if you read the zoning, there is a requirement for a certain amount of square footage. This is a property that pre-dates zoning; it has multiple buildings. S. Penney stated that the lot size is under the minimum. P. Monziona asked if they are going to tear it down and put it back up again, and they are seeking variances on the right of way setback and the property line setback, they would also need a variance for the lot size. S. Penney stated that the footprint is grandfathered.

P. Monziona asked what the Special Exception is for. Mr. Varney answered that it is to expand the building upward or downward. They are not increasing the second or third floor, but they are going below the sill, so they need a Special Exception for that. P. Monziona clarified that they need the Special Exception in order to construct the basement; they are doing that under Section 320B-1. The footprint is staying the same.

T. Morgan asked why they are tearing it down and rebuilding it rather than just putting a foundation under it. Mr. Varney stated that it is the choice of the contractors involved. It's on a steep banking; Spring Street is down over a hill. They don't really need to save the building; they're willing to build it all over again. S. Penney handed around some photos. She also stated a clerical correction; this property is not in Lakeshore residential, it is in residential commercial.

Mr. Varney stated that the cottage looks good on the outside; on the inside it is an old, antiquated building. P. Monziona referred to the photos to clarify that the cottage being discussed is the small one in the back.

T. Morgan clarified that this is just for seasonal use. Mr. Varney stated that it is; they only have a seasonal water supply.

S. Miller asked if the intent is to put in a finished basement. Mr. Varney answered that it will be a full cellar just to stabilize; it is not a great expansion of the building that he knows of, but it probably will be living space when it is done. S. Miller asked if they were going to put in plumbing for a bathroom down there; Mr. Varney does not know about that. S. Miller asked what the water table is there; Mr. Varney answered that it is about two to three feet. Where the septic design is in the front, it is lower. S. Miller asked if there is a greater risk of the foundation settling as opposed to piers. Mr. Varney stated that the foundation there is old and homemade; a new foundation is not going to go anywhere because of how it's done today.

P. Monziona stated that under 328:4, they are going to expand the use, building the foundation and going away from the piers and posts. If now they are going to create more living space down there, does that constitute an expansion of the use? He read this section from the regs. Mr. Varney stated that the septic design is limited; there is no expansion of bedrooms. It's a two bedroom now; it can't be a three bedroom. The use could be going from residential to commercial; this is going to stay residential. They came to him and asked about tearing it down. He told them they could not do that; the only thing they can do is stabilize it. They went to the

state who told them they can't do anything because they are non-conforming. They do allow you to stabilize the foundation on a building, and that's all they are doing. The intent here is not to make the building any more than what it is, but if they put in a full foundation, that changes things. He doesn't know what they're going to do with it. They're not planning on making it livable or expanding anything. It's still going to be the same cottage with the same number of bedrooms. They might have a living room down there and use it as a ping-pong or pool room.

T. Varney explained that he wants to stress that they are improving storm water runoff because they have incorporated a drywell and some swales, and they are upgrading the septic system. They are bringing this property into environmental compliance. Other than that, they are doing very little under the rules they are allowed by the state.

P. Monziona invited public input, either in favor or opposed. Hearing none, public input was closed.

P. Monziona explained that there are two things they are working on here. One is the Special Exception, and the other is the Variance for property line and right of way setbacks. The Special Exception is for the non-conformance of the construction. He asked for the Board's preference as to which should be done first. T. Morgan stated that as the Variance is first in the application, they should probably do that one first.

WORKSHEET - VARIANCE

1 - L. LaCourse stated that the variance **will not** be contrary to the public interest. They are just rebuilding the cottage in the footprint; that should not have any negative impact on the public interest at all. All members agreed.

S. Miller abstained from item #2, as he has not yet read the Master Plan.

2 - T. Morgan stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. As Mr. Varney pointed out, he is making relatively minor changes here, and those changes he is making improve the property ecologically. P. Monziona and L. LaCourse agreed for all those same reasons.

3 - T. Morgan stated that by granting the variance, substantial justice **will** be done. He thinks if it is within public interest and within the spirit of the ordinance then justice is done with the granting. P. Monziona agreed for those reasons, and added that the ecological conditions on the property are going to be improved, so he would add that to substantial justice. L. LaCourse agreed for all the reasons mentioned. S. Miller also agreed.

4 - P. Monziona stated that the request **will not** diminish the value of the surrounding properties. There is no evidence from any abutters or anyone else to that affect and generally speaking, when a property is improved this way, it will, if anything, enhance values of surrounding properties. L. LaCourse agreed and added that it will enhance the value of surrounding

properties because the building will be in better shape than it is currently. S. Miller and T. Morgan also agreed.

5 – L. LaCourse stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of a property that distinguish it from other properties in the area, that no fear of substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property and the proposed use is a reasonable one, and based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. S. Miller agreed. T. Morgan agreed and added that what Mr. Varney is proposing here is that a non-conforming property will be improved while being allowed to remain non-conforming. It would be a hardship to be required to move this cottage in its entirety; this proposal is a reasonable one. P. Monziona agreed, adding that he thinks what is causing the variance to be required is that this property is going to be vastly improved. It will be reconstructed, staying within the footprint.

P. Monziona asked for a motion on this matter.

L. LaCourse made a motion to approve the application for a variance for Case Z10-07 and 08. T. Morgan seconded the motion. The motion passed with three votes in favor, none opposed, and one abstention.

WORKSHEET – SPECIAL EXCEPTION

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

2 – T. Morgan stated that the specific site **is** an appropriate location for the use. The use is not changing to any appreciable degree. P. Monziona agreed, but is concerned about Section 320A-4, expanding the use. He agrees as long as the basement or foundation remains the same as was described today. L. LaCourse agreed for the same reasons. S. Miller agrees, as long as there are no additional bedrooms either above or below on the new structure.

3 - L. LaCourse stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. If anything, it will be the opposite. S. Miller agreed. T. Morgan and P. Monziona also agreed.

4 - S. Miller stated that there **is no** valid objection from abutters based on demonstrable fact. T. Morgan agreed, stating that there is no input from abutters. P. Monziona agreed that there is no abutter input in the record. S. Miller agreed also.

5 - T. Morgan stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking; there are no changes to any of those, so there is no change to pedestrian or vehicular ways. P. Monziona agreed. L. LaCourse agreed, stating that the changes they are looking at would have no affect at all on vehicular or pedestrian traffic. S. Miller agreed.

6 - P. Monziona stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. He agrees that is the case with the specific proviso that the basement will remain a basement and foundation and is not expanding the use. L. LaCourse agreed. S. Miller asked if they could move the living room downstairs and turn the living room into a bedroom. P. Monziona explained that his concern is about the provision about expanding the use. What he is saying when he agrees that this criterion is fulfilled is that it is fulfilled as long as the use within the structure is not being expanded. Right now there is no living space in this building that is in the basement; it is sitting on piers. The only way he can agree that this is met is if the use is not being expanded. L. LaCourse asked if storage constitutes expansion. P. Monziona thinks that is something they can determine but it is a basement and if it becomes a living space that would be different. They might want to consider some conditions if they get to the point of granting the Special Exception. S. Miller stated this is a combination of commercial and residential; if they wanted to they could finish and rent out the basement. P. Monziona stated that the kind of use remains the same. It is a single family; it is restricted on the DES approvals, and it is seasonal. There are a lot of restrictions on this property by the state. The use itself remains seasonal residential, so he's not changing the use into commercial or anything else other than residential. He is concerned with expansion of use, not change of use; using more of the building than was previously used. He has heard, at least to his satisfaction, that there is nothing in the plan before them that is seeking to do that. S. Miller agreed with P. Monziona's constraints. T. Morgan also agreed.

7 - L. LaCourse stated that there **is** adequate area for safe and sanitary sewage disposal and water supply, especially now with the upgrade to the sewage system. All agreed.

S. Miller is going to abstain from item 8 as he has not yet had a chance to read the Master Plan.

8 - T. Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. P. Monziona agreed stating that the proposed use is not changing; it's residential and it is consistent. L. LaCourse agreed for the same reasons.

P. Monziona asked for a motion to approve the Special Exception.

T. Morgan stated that he would make a motion to approve the application for a Special Exception, but he wanted to make sure all the members are satisfied in terms of conditions. He would not be concerned if they put a ping-pong table or a pool table or something like that. His concern would be if it enabled an additional bedroom, either by moving living space down there and using the existing living space. He would be satisfied with a condition that there is no addition of bedrooms as a result of this structure. L. LaCourse is inclined to agree; if the space becomes finished it is an expansion of use. If it stays a raw space and somebody throws a pool table down there, that's fine. If you start insulating and putting up sheetrock and putting a rug in, that is expansion of use. P. Monziona stated that the only reason he thinks that becomes an issue is that it would probably require another variance so his suggestion on the motion is that it be so restricted unless and until the property owners apply for an appropriate variance under 320A-4. That's not to say that they couldn't come in at a later time with another application and expand it into a living space. Being as that is not being done now and they are being asked to rule on this, he would suggest an amendment to the motion saying that is a restriction unless they seek a

variance otherwise. P. Monziona suggested that the more specific the motion, the more enforceable it becomes. He would agree with T. Morgan’s restriction and suggest that the additional proviso that without further variance, that it doesn’t preclude them applying in the future. They would need to come back and seek that Special Exception.

T. Morgan made a motion to approve the application for Special Exception with the condition that there are to be no additional bedrooms, either in the basement or by moving living space to the basement unless the applicant applies for further Special Exception under Section 320A-4. L. LaCourse seconded the motion which passed with three votes in favor and one abstention.

The application for Special Exception was granted.

P. Monziona stated that, for those sitting waiting for cases to come up, it may seem like they talk a lot. It is better for them to be loquacious; it makes a better record in the law for them to articulate their reasons. They are encouraged to do that on the record.

VII. NEW APPLICATIONS

Case Z10-09 Lawrence and Charlene Martin	Map 15, Lot 64	Variance 560 Old Wolfeboro Road
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Application submitted by Lawrence Martin to request a variance from Article 300 Section 328 to allow the expansion of the den by adding living space to the existing den by going up beyond the allowable 35 foot height limit. This parcel is located in the Rural zone.

S. Penney read Case Z10-9 into the record.

Jason Martin, the son of the applicants, is representing this case.

Board members reviewed the application. P. Monziona stated that sometimes they like to have more content than this, such as pictures, but that doesn’t necessarily mean the application is not complete. Mr. Martin stated that he does have additional pictures. S. Ames asked P. Monziona if he has the drawings; he does not. Drawings and elevations were provided to the members who did not have them.

L. LaCourse made a motion to accept the application as complete. T. Morgan seconded the motion; the motion passed by unanimous vote.

Mr. Martin stated that what they are doing here is creating a viewing deck; this will be more or less a third story on the building. It will be enclosed with windows. The reason for it is that they like to look out above the tree line and enjoy the view without disturbing the trees. This is using the existing footprint of the foundation; they would re-pour, but it is not a basement. It would be using the existing footprint, and then going up.

P. Monziona asked if this would create a room up there. Mr. Martin answered that it would be a room with some chairs, mostly just for viewing like you would on a porch. P. Monziona stated that this takes the height to 39' 2", based on the average grade. He explained that the actual height is higher in places, but when they go around the structure and do an average, they end up 4' 2" above the height restriction.

T. Morgan stated that part of the reason for this ordinance in the Town of Alton is due to the Fire Department's need to gain access. He asked how people get in and out of this room. Mr. Martin answered that there will be a spiral staircase hugging the wall; it starts at ground level and goes to the second floor, where access can be gained through a bedroom. It continues on up to the viewing deck. He offered a better drawing. T. Morgan clarified that once you get on that staircase, you can get on or off at other than the very top and bottom.

T. Morgan asked for clarification concerning the slope of the land where the trees they are trying to see over are located. Mr. Martin answered that from his point of view, they are trying to look to the left; from their (the Board's) view it would be to the right. T. Morgan asked what the elevation of the house is relative to the road. Mr. Martin answered that the ground slants down toward the road. T. Morgan asked if Old Wolfeboro Road is to the west of the house; they are trying to look south and east. Mr. Martin answered that they are definitely trying to look east, and then over the trees obstructing the view of the lake. T. Morgan asked if they would have sufficient elevation to see the lake if they add this structure; Mr. Martin answered that they can see the lake now, but there are some trees that detract from the view. They can see part of the lake now, but with this addition they can see all of it.

P. Monziona asked about the actual height of the structure; he sees 38' 5". Mr. Martin answered that it is 38' 5" at the highest point. S. Miller asked if this would almost be considered four stories; he asked if there are any restrictions on four stories. S. Penney stated that the restriction is on height. S. Miller asked if there would be a bathroom, kitchen, or anything else up there; Mr. Morgan answered that there would not. S. Miller asked if they would be barbecuing up there; Mr. Morgan said they would not. S. Miller asked if it would have encased windows; Mr. Morgan answered that it would. S. Miller asked if it would be used as a bedroom at all. Mr. Morgan answered that it would not. S. Miller asked if it would be fully insulated. Mr. Morgan said it would. S. Miller asked if a ladder truck could make the grade to get up there. Mr. Morgan answered that it could. T. Morgan mentioned that in the Planner's Report the Fire Chief voiced no concerns at this time.

P. Monziona invited further questions and comments. There were none.

P. Monziona opened the floor to public input, both in favor and in opposition. There was none; public input was closed.

WORKSHEET - VARIANCE

1 – P. Monziona stated that the variance **will not** be contrary to the public interest. The highest point in the rendering is 38' 5" with an average of 39' 2". It is three or four feet above the 35 foot restriction. His primary thing would be about ladder trucks getting to it, but the Fire Chief

has expressed no concern; he finds no other evidence that would indicate that this variance would be contrary to the public interest. L. LaCourse agreed. S. Miller asked if the house faces west. Mr. Morgan stated that the front of the house faces west. S. Miller asked if there are any neighbors behind the house who could possibly have their sight impeded. Mr. Morgan answered that there are not; they are surrounded on three sides by trees. There is a neighbor to the south, but they are higher. To the west it drops down. S. Miller agreed. T. Morgan agreed, stating that the Board has addressed the two public concerns here – one is fire and the other is blocking an abutter's view.

2 – L. LaCourse stated that the request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. He says this because of the isolation of the building. T. Morgan agreed. P. Monziona also agreed, stating that there are no concerns from the fire department and it will not impose an undue structure on the lot or to any abutters.

S. Miller abstained from item #2, as he has not yet read the Master Plan.

3 – S. Miller stated that by granting the variance, substantial justice will be done. There will be no harm to anybody else but more people will be able to enjoy the beauty of Alton. All members agreed.

4 – T. Morgan stated that the request will not diminish the value of the surrounding properties. They have had no input on that, but he does not feel there is any reason to question it. P. Monziona agreed; it is located on a very large lot and there is no evidence that there will be any adverse impact. L. LaCourse and S. Miller agreed.

5 – P. Monziona stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of a property that distinguish it from other properties in the area, that no fear of substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property and the proposed use is a reasonable one, and based on the above analysis, special conditions do exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. For all the reasons they have stated that it does not adversely impact anyone, there are no concerns from the fire department that unnecessary hardship would result from the strict enforcement of this ordinance. L. LaCourse disagreed. He feels that although they meet all the other criteria, he does not see where any hardship exists because a fourth story cannot be put on to look over trees. S. Miller disagreed as well, for the same reasons. T. Morgan stated that the fear of substantial relationships; the public purposes are fire protection and the views of neighbors. This is an unusually slanted and structured piece of property and the proposed use is a reasonable one to allow the addition. Based on the above analysis, special conditions do exist such that the literal enforcement of the zoning ordinance does result in unnecessary hardship.

P. Monziona stated that given the fact that only two members are agreeing that the unnecessary hardship criterion has been met in this case, the Board fails to have a minimum of three members agreeing on all the criteria. S. Miller raised a point of order; it says in the summary statement

that no vote is needed. P. Monziona explained that no vote is needed; there is a do or do not in the last sentence. In other words, if they do not all agree to the do or do not, then this criterion is not met. They still have to decide the do or do not part of that.

P. Monziona explained that two members had said that special conditions do exist such that the literal enforcement of the zoning ordinance does result in unnecessary hardship. Two members said that special conditions do not exist. Given that the applicant has failed to obtain the appropriate number of votes in favor of the application on all of the criteria on the worksheet, he does not think the application can be granted.

L. LaCourse made a motion to deny the application. There was no second on the motion.

L. LaCourse explained that it is his feeling that the height is not needed. He feels that the same thing could be achieved at roof level, without the need to go that height and requiring a height variance.

S. Ames explained that if they don't meet all the criteria, it doesn't pass. There is no real need for a motion to deny, but the reason for the denial must be iterated.

P. Monziona stated that, due to failure to meet all the criteria with the necessary number of votes, the application for Special Exception is denied.

S. Miller explained that he voted the way he did because he believes literally in the last statement; he does not believe there is substantial harm being done because there are no neighbors in the back that anyone is being affected. He would vote for passing this except for that.

P. Monziona explained that this unnecessary hardship criterion for a variance was recently codified; prior to this it was a creation of case law in New Hampshire. The courts had defined what that meant. When they looked at that under the court's definition, they really looked at it thought about whether there are special conditions on the property that would distinguish it from other properties. Those are the things they considered. They simply codified what they had already been doing. Hardship oftentimes was considered you couldn't do what you wanted because the zoning ordinance prevented it and the uniqueness of the property distinguished it from other properties and therefore you should be able to have the variance. He has found that those conditions do exist here, but for the reasons stated, two of the members feel they are not being met. For that reason, the application cannot be granted.

L. LaCourse stated that he does not see where the hardship is on the property. The property is being used as it is meant to be used, and he does not see where there is a hardship just because there isn't an additional deck on a roof. He would think there is a pretty good possibility that the same affect could be achieved without having a variance; without the extra 4+ feet.

S. Ames informed Mr. Martin that there can be an appeal within 30 days.

Case Z10-10 Gary and Maureen Wasserman	Map 63, Lot 19	Special Exception and Area Variance 14 Peters Path
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Application submitted by Todd Bernasconi on behalf of applicants Gary and Maureen Wasserman to request a Special Exception from Article 300 Section 327 and an Area Variance from Article 300 Section 320 B2(a) to allow a spiral staircase on the existing deck to allow access to an upper deck to be constructed. The staircase will be an expansion of the footprint and within the allowable Shoreland setback. This parcel is located in the Lakeshore Residential zone.

S. Penney stated that she has pictures showing the property. These were to be passed around.

There was discussion concerning the policy of granting a continuance

The agent/applicants for this case were not in attendance. Abutters who had been waiting for this case were told that this will be a continuance when it is heard at the next meeting, so they will be the first cases heard.

T. Morgan made a motion to continue case Z10-10 until the next meeting on May 6, 2010, with this continuance counting as one of their two allowed. L. LaCourse seconded the motion which passed without opposition.

P. Monziona explained that they have granted more than two continuances on a number of occasions because there have been circumstances beyond the applicant's control that would warrant a continuance. S. Miller suggested that the abutters, who have borne the hardship of being here all evening, should be allowed to present an affidavit or written narrative rather than having to come to another meeting. S. Ames explained that is always an option. The abutters asked if they could look at pictures or drawings. S. Ames explained that the application is public record; they can look at it at any time when the Planning Department is open.

VIII. PREVIOUS BUSINESS

John Devers, the Code Enforcement Officer, stated that they would have an applicant before them at the next meeting. He goofed. He allowed the expansion of non-conformity. The expansion is into the building envelope, but part of the house has a property setback line running through it. In the process of looking at the septic system, CSPA, and all of that, he made a mistake. He has already spoken with Jim Sessler; he basically said that because they are not going into the setback any further, he does not feel it would rise to stopping them completely from continuing what they're doing. That was his large concern. He also wanted to apologize because he is still trying to get a grasp on every little piece of this that has to be looked at when he has everything in front of him.

There is another piece that will come with this; it is a request for an equitable waiver of dimension. On this house, to do the addition, they moved the bulkhead. The contractor measured from where he strung a line he thought was at the boundary line. Now he has set the bulkhead; it is installed about two feet closer than it should be. He has had a conversation with

the abutter. There are two ways to solve this. One is going to be an equitable waiver of dimension, and the other is to pull it out and move it over two feet. The abutter has no issues with leaving it where it is; he's good friends with the owner and with the contractor.

Mr. Devers explained that when he started here on Columbus Day weekend, he was working in Allentown and Chichester at the same time. He has been doing that for three months, and he also sits on the Planning Board in Meredith. He has been working hard not to make any mistakes.

P. Monziona stated that obviously these things happen. They had a case tonight that went to counsel; they talked about municipal estoppels and other legal arguments that can be made. The criteria were met by the applicant anyway; in his opinion it was a no harm, no foul situation. There was no need even to get to the legal argument of municipal estoppels. It is appropriate that they are talking about this in a public session this way, and it is appropriate that he (Mr. Devers) is giving them helpful, useful information ahead of what is going to happen. He does not think anyone on this Board would find any fault or issue with his work and what happens. It's completely understandable; to try to figure all these things out. He thinks when that applicant comes in next month, they will review it all, they will go through the criteria and one of the things they will have to take into consideration as they go through the criteria, whether it be hardship on the applicant because of the circumstances, they will try to factor it all in and make the decision at that time.

Mr. Devers added that the contractor did say that as soon as he has the foundation pointed, he is having the surveyor certify everything; he will bring that with him when he comes before the Board. S. Penney clarified that the foundation is in but the structure is not built. Mr. Devers agreed; they are getting ready to go up with the structure.

P. Monziona stated that they would be on the agenda next month; he thanked Mr. Devers for the information, as it will help them.

Mr. Devers apologized again and stated that he is looking forward to continuing to work with the Board. T. Morgan thanked him for his input so far and stated that it is more than what they have had in the past. Mr. Devers explained that he is always willing to find out the answers to things he doesn't know – that is how he learns. P. Monziona added that sometimes, as a Board, they have felt that they haven't known whether what they do here makes a difference in the field because they haven't known whether what they do here gets enforced. They haven't had the relationship, just in the short time he has been here, with the Code Enforcement Officer. He is not trying to be critical of the predecessor; that is just the fact. Mr. Devers has been here more already in just a short time, and his input has been helpful and useful, and he is glad Mr. Devers is doing it. He is also glad he told them about next month.

IX. APPROVAL OF MINUTES

Due to the late hour, approval of the minutes of the March 4, 2010, meeting was postponed until the next meeting.

X. NEW BUSINESS – ELECTIONS FOR 2010-2011

Lou LaCourse nominated Paul Monzione as Chair. Tim Morgan seconded the motion, which passed by unanimous vote.

Paul Monzione nominated Tim Kinnon as Vice-Chair. Tim Morgan seconded the motion, which passed by unanimous vote.

Paul Monzione nominated Lou LaCourse as Clerk. Tim Morgan seconded the motion, which passed by unanimous vote.

XI. CORRESPONDENCE

The OEP Annual Spring Zoning Conference is being held in Nashua, NH, on May 8. S. Ames needs commitments by May 6. The Town pays for it. Carpooling is encouraged.

XII. ADJOURNMENT

T. Morgan made a motion to adjourn; seconded by L. LaCourse and passed without opposition.

Meeting was adjourned at 10:03 p.m. There is a Zoning Delineation meeting on Tuesday, May 6, 2010 at 5:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session